TRADE REFORM LEGISLATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

MARCH 20, 21; APRIL 8, 10, 11, 15, 16, AND 17, 1986

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TRADE REFORM LEGISLATION

THURSDAY, MARCH 20, 1986

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:38 a.m., in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

[Press releases announcing the hearings follow:]

FOR IMMEDIATE RELEASE
WEDNESDAY, MARCH 5, 1986

SUBCOMMITTEE ON TRADE #19
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH BUILDING
WASHINGTON, D.C. 20515
TELEPHONE (202) 225-3627

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES HEARINGS ON TRADE REFORM LEGISLATION

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee on Trade will hold hearings on comprehensive trade reform legislation. The hearings will begin on Thursday, March 20, and Friday, March 21, 1986, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 9:30 a.m. The hearings will continue through mid-April on dates and in locations to be subsequently announced.

The first two days of hearings will provide a general overview of trade law reform. Subsequent days will focus on specific issues, including proposals to amend laws which address unfair trade practices, import relief and adjustment, and trade negotiations. The Subcommittee expects to markup a comprehensive trade reform bill at the conclusion of these hearings. The Subcommittee schedule for development of an omnibus trade reform measure is intended to meet the schedule set forth by the House leadership for action on overall trade and monetary policy reform by mid-May.

Numerous trade reform proposals have been introduced during the 99th Congress, which are currently being reviewed by the Subcommittee for possible inclusion in an omnibus trade reform bill. A list of major issues and proposals currently under consideration is attached. Witnesses should focus their testimony on these specific topics as well as provide any other detailed legislative recommendations they believe essential. Measures to reduce the U.S. trade deficit and foreign trade surpluses (H.R. 3035), telecommunications trade, and resource input subsidies are the subject of separate hearings and will be considered for inclusion in the omnibus bill.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD:

Requests to be heard must be made by telephone to Harriett Lawler [telephone (202) 225-3627] by close of business, Monday, March 17, 1986. The request should be followed by a formal written request addressed to Joseph C. Dowley, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D.C. 20515. The Subcommittee will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff (202) 225-3943.

In view of the limited time available to hear witnesses, the Subcommittee will not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance will be encouraged to submit written statements for the record of the hearings. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

(MORE)

Witnesses wishing to present oral testimony are requested to briefly summarize their written statements. The full statement will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Subcommittee are required to submit 150 copies of their prepared statements to the Subcommittee on Trade office, room 1136 Longworth House Office Building, at least 24 hours in advance of their scheduled appearances. Failure to do so may result in the witness being denied the opportunity to testify in person.

Each statement to be presented to the Subcommittee or any written statement submitted for the record must contain the following information:

1. The name, full address, and capacity in which the witness will appear (as well as a telephone number where the witness or a designated representative may be reached);

2. A list of any clients or persons, or any organization for whom the witness appears; and

3. A topical outline or summary of the comments and recommendations in the full statement.

WRITTEN STATEMENT IN LIEU OF PERSONAL APPEARANCE:

Persons submitting a written statement in lieu of a personal appearance should submit six (6) copies of their statement by the close of business Friday, April 18, 1986, to Joseph K. Dowley, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing a written statement for the record of the printed hearings wish to have their statement distributed to the press and the interested public, they may provide 75 additional copies for this purpose during the course of the public hearings.

* * * * * * * * * * *

Attachment

MAJOR LEGISLATIVE ISSUES

The Subcommittee will receive testimony on legislative proposals which address the following issues:

I. Unfair Trade Practice Laws (section 301, Trade Act of 1974; section 337, Tariff Act of 1930; antidumping and countervailing duty laws)

A. Section 301

1. Transfer of decisionmaking authority from the President to the U.S. Trade Representative

2. Reducing Presidential discretion, particularly circumstances in which mandatory retaliation may be appropriate

3. Including export targeting practices and circumstances in which retaliation might be required

4. More specific and shorter time limits for determinations and actions

5. Circumstances in which self-initiation of investigations may be appropriate

6. Authorities for termination/modification of actions or compensation

B. Section 337

1. Eliminating the injury requirement in intellectual property rights cases (retention of domestic industry requirement)

2. Shorter time period for issuance of temporary exclusion orders

3. Civil penalties for the sale or transportation of counterfeit goods

C. Antidumping and Countervailing Duty Laws

1. Measures and procedures to address and discourage persistent subsidy and dumping practices

2. Measures to provide effective relief for industries with short product life cycles

3. Revision of standards applicable to nonmarket economies

4. Measures to deal with foreign subsidies and dumping into third country markets

II. Import Relief and Adjustment (sections 201-203, Trade Act of 1974); National Security (section 232, Trade Expansion Act of 1962)

A. Import Relief and Adjustment

1. Transfer of decisionmaking authority from the President to the U.S. Trade Representative

(MORE)

2. Limiting USTR discretion with respect to import relief in cases in which the industry commits itself to a self-created adjustment plan (concept of conditionality)

3. Clarifying the "substantial cause of serious injury" standard with respect to general recessionary conditions in the U.S. economy

4. Making expedited trade adjustment assistance automatic to the petitioning industry upon an affirmative injury finding by the ITC

5. Temporary emergency relief for perishable agricultural products or for industries having critical circumstances

6. Requiring the public auction of import quotas, and the designation of all revenues from tariffs and auctioned quotas for use as trade adjustment assistance

7. Alternative forms of remedy, other than quotas or tariffs, such as antitrust relief

B. National Security

Establishment of a time limit (e.g., 60 days) for Presidential determinations under section 232

III. Trade Negotiating Authorities

Tariff and nontariff negotiating authorities, and possible conditions on their use and implementation

Overall and specific legislative objectives for trade negotiations, particularly a New Round of GATT negotiations

. . . . . .

FOR IMMEDIATE RELEASE
THURSDAY MARCH 13, 1986

SUBCOMMITTEE ON TRADE #22
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
TELEPHONE (202) 225-3627

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES CONTINUATION OF HEARINGS ON TRADE REFORM LEGISLATION

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee's hearings on comprehensive trade reform legislation will continue, beginning at 9:30 a.m. each day, according to the following schedule:

Date	Room	Subject
March 25	1100 Longworth HOB	Unfair Trade Laws and Market Access (301, 337, AD-CVD)
April 8	B-318 Rayburn HOB	
April 10	B-318 Rayburn HOB	
April 15	1100 Longworth HOB	Import Relief and Adjustment/ National Security
April 16	1100 Longworth HOB	
April 17	1100 Longworth HOB	Trade Negotiating Authority

All details for submission of requests to be heard and written statements remain as announced in Subcommittee press release #19, dated March 5, 1986. Note that requests to be heard must be received by Monday, March 17, 1986.

* * * * * * * * * * *

FOR IMMEDIATE RELEASE
THURSDAY, MARCH 20, 1986

SUBCOMMITTEE ON TRADE #24
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
TELEPHONE (202) 225-3627

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN,
SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES
CHANGE IN SCHEDULE OF
HEARINGS ON TRADE REFORM LEGISLATION

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that due to a change in the schedule of the U.S. House of Representatives, the Subcommittee will not meet as originally scheduled on Tuesd y, March 25, 1986, to receive testimony on comprehensive trade law reform.

Other previously announced hearing dates on this subject (April 8, 10, 15, 16, and 17) are not affected by this scheduling change. All details for these hearing dates remain as previously announced in Subcommittee press release #22, dated March 13, 1986.

In addition, the Subcommittee is adding Friday, April 11, 1986, to the hearing schedule on trade law reform in order to accommodate as many witnesses as possible. The hearing on April 11 will begin at 9:30 a.m. in the main Committee hearing room, 1100 Longworth House Office Building.

Witnesses who have requested to testify will be notified shortly of their scheduled dates for appearances.

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Chairman GIBBONS. Good morning, ladies and gentlemen.

Today the subcommittee begins its first of 8 scheduled days of hearings on the trade reform legislation. We expect to hear from a broad cross-section of Government, business, labor and independent experts about the state of the U.S. trade policy and the need for legislation.

This hearing marks the beginning of a legislative process which, according to an agreement between key committees and the House leadership, should result in House action on an omnibus trade and monetary policy bill by mid-May. To meet this deadline, the subcommittee expects to complete our hearings by April 17 and begin markup as soon as possible thereafter so that the full Committee on Ways and Means can take up the bill by April 28.

Before we begin today, let me mention that we will recess today's hearing at 12 because the full committee has scheduled a markup in H-208 on a Social Security Technical Corrections Act. We will reconvene at 1 p.m. in this room to conclude today's witnesses.

And I expect that today we would get through the first two panels before we get to the Business Roundtable at 1 o'clock.

I had hoped that by this time we could have delivered to everyone a copy of the legislative language that we will call a discussion draft, so that the comments that you make could be targeted to something that is closer to final form. Staff informs me that they have still got a little more drafting to do on that, because of some changes that have recently been made.

I would ask you to be patient and them to be speedy. And hopefully, by the end of the day or tomorrow, they can have some material available for everybody so that you can comment. If you would like to comment in writing or by other means, feel free to do so. I would suggest that if you comment in writing, you send copies of your correspondence to each member of the subcommittee, at his office, in order to save all the time and trouble we would have of trying to distribute it all from the central office.

I hope that we can develop a bipartisan piece of legislation. As I have said many times in the past, the most important piece of trade legislation we could pass today would be a balanced budget. The next most important piece of trade legislation we could pass would be a better tax policy for the United States, one that encourages savings and encourages investment in productive enterprise.

The third most important piece of legislation that we could pass would be a better export administration act.

And hopefully, we could do something about the rapidly gyrating dollar that seems to swing from highs to lows without much change in fundamentals. That worries me.

Perhaps we can do all that in this legislation. I do not know.

I am particularly worried about the area of subsidies, as you have heard from me on many, many occasions. And perhaps I will have some more amendments to add to this bill in the area of subsidies. I think subsidies are the most pernicious thing that we face in the future. I am talking about injurious subsidies now, not just minuscule subsidies. Ones that can vastly distort the trading picture.

I aim for a level playing field and free and open markets. That is my goal. I am a free trader. I make that statement without apol-

ogy. I believe that the standard of living of all people in the world will rise, that the understanding of that trade brings to people will improve, and that it is the final goal that we must seek. It is a goal. It is not an actuality.

I realize that there are many things that need to be done with the subsidy trade laws that we now have. I am worried about the time it takes to reverse a bad situation, but yet I want a transparent and a thoughtful process, deliberative process, adversarial process in reaching those decisions.

I am worried about the cost of reaching those decisions, not only cost to the litigants, but the cost to our society. I am concerned that the GATT is not a viable enough international instrumentality to carry its responsibilities and that we must improve the GATT. There would not be a GATT today, were it not for the United States.

We must lead. We must lead by example and we must not be foolish. We must use our market as a tool to promote a better, freer, open trading relationship. That is the ultimate weapon that we have.

We are dealing with other sovereign nations and unless we can gain their attention, there is very little that we can do.

I wonder if any of my other colleagues would like to make a statement as we open these hearings?

Mr. SCHULZE. Mr. Chairman, if I may, I would like to concur in what you have said and especially the latter part of your remarks, where we need international institutions to oversee or to guide international trade.

At this time, and for the past several years, the GATT organization has not been effective in that role. My feeling, of course, is that we should develop a new system but I would not be at all unhappy if GATT were to take the bit in its teeth and really take definitive action and get going somewhere.

So I hope that as we go through this bill and these deliberations, we will keep an eye on the ramifications of what we do in the international community and that the result of the end product that we put forth will have the goal of increasing international trade and not retarding it.

I thank you for the opportunity.

Chairman GIBBONS. I agree with you. We cannot move forward unless we do increase the trade.

All right. The staff has asked me to announce that summaries of the discussion draft are available. We hope all witnesses will have paid some attention to the summary. We realize that the summary was not available until yesterday. And perhaps by the end of the day, some actual working language will be ready and available at the subcommittee office.

Our first panel of witnesses today is composed of the Labor-Industry Coalition for International Trade [LICIT], Howard D. Samuel, Kenneth Millian, and Alan Wolff. From the Basic Industries Coalition, we have John Meagher, and from the National Association of Manufacturers, we have Lawrence A. Fox.

It is good to see all of you here today.

I want to commend you first for the effort that you have put into this and Mr. Samuel, we go to you first.

STATEMENT OF HOWARD D. SAMUEL, PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL-CIO, ACCOMPANIED BY KENNETH Y. MILLIAN, VICE PRESIDENT, W.R. GRACE & CO.; AND ALAN WM. WOLFF, COUNSEL, DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD, ALL ON BEHALF OF LABOR-INDUSTRY COALITION FOR INTERNATIONAL TRADE [LICIT]

Mr. SAMUEL. Thank you.

Mr. Chairman, as you know, I speak here wearing, in effect, two hats. One as president of the Industrial Union Department of the AFL-CIO representing 55 affiliates and about 5 million workers in industries, many of whom of course have been sharply impacted by the international trade situation.

Today I will spend more time wearing my other hat, speaking on behalf of my other position as cochairman of the Labor-Industry Coalition for International Trade, which is a group of 10 large corporations and 10 major unions united together and trying to find answers to some of the problems that you spoke of in your opening remarks.

If I may have the chairman's permission, because of the short time span we had to prepare our statement, we would like your permission to do some additional work on the statement.

Chairman GIBBONS. Certainly. I understand that. I realize that those of you who are testifying early in this are under some kind of handicap. So we would like to hear back from you.

Mr. SAMUEL. I will just make some brief summary remarks. And of course, what I will be doing is speaking on behalf of the so-called LICIT bill, the Trade Law Modernization Act, H.R. 1950.

Let me start by saying that I think H.R. 1950 does represent, to a major extent, the chairman's goal of a bill which is labor and industry, which is Republican and Democratic. It is not a sectarian bill. It is a bill that seeks to approach, in the broadest possible way, the problems that we are all here assembled to deal with.

Specifically, speaking in behalf of some 5 million workers and American industry, let me say that we have done a lot of learning in the last few years. We have learned that our economy is no longer an island. We have become thoroughly internationalized. We know it is inevitable. I do not think anyone is trying to put their finger in the dike to stop that process.

We know, in many ways, it is necessary and helpful. Some 25 percent of the goods we produce are exported and we would not want to lose those jobs for anything.

But we also know there is a lot of bad news. Trade deficits, of course, I need not spend any time on. Heavy unemployment ranging as high as 2 million jobs probably permanently lost, closed factories, communities that have been seriously damaged, some of them—I will not say permanently, but for long periods of time by the impact of international trade.

We have learned also, as I think all of us have, that international trade has its impact not only on some of the traditional industries that we always expected, starting of course with the nondurables, the industry I come from, apparel and textiles and shoes and so forth.

And we have even learned, in the last few years, that the impact of international trade not only is felt by the smokestack, traditional industries, but also in high technology, such industries as fiber optics and semiconducters, computers of course have been seriously affected by the impact of international trade.

And we are fully aware that we have lost market share, world market share, in many of these high technology industries and have been losing it for some 15 years. So it is not a temporary phenomenon caused only by the overvaluation of the dollar.

I think that labor, despite this impact, is aware that the answer is not going back to the days of Smoot-Hawley or the spirit of Smoot-Hawley. But we also are aware that the principles of free trade, which the chairman supports, are in very real danger.

The public opinion polls, as I think the chairman is aware, increasingly show that the American people are becoming more and more suspicious of the consequences of free trade and, in some cases, polls even indicate that they are willing to pay high prices for domestic made goods, in order to save jobs. That represents, I think, a challenge and, in some ways, a threat to the whole principle of an open trading system.

And I think that is why the chairman, and this committee, and the Congress is so concerned and determined to do something about the problem.

The two areas that I will just spend a minute or two, if I may, talking about specifically, in terms of H.R. 1950, where we think that remedies are most seriously needed.

One is in the approach to the problem of targeting. I think there are few things about international trade that dismays the average American worker more than the targeting activities of other countries aimed at destroying certain sectors of American industry and with them their jobs.

It is hard to imagine, I think, for the average American citizen in this country, where Government intervention is not terribly systematic and not always very logical and certainly not designed to target other countries, that other countries do it. But we have learned that Government intervention in most of our trading partners is taken for granted in a very systematic and orderly way and with a very definite purpose.

If I may say, I think most of our trading partners have long since given up Adam Smith on comparative advantage and are following Clausawitz on to war. And they have been quite successful.

The response, we believe, is a strengthening—as the chairman does—of section 301 with an injury test. We think there should be a mandatory response to offset the harm. We particularly believe that the response should not be simply a sham response or not a legitimate response.

I think if the response is mandatory and proper and effective, that labor would support that kind of an approach. And certainly LICIT supports that kind of an approach and we congratulate the chairman for the leadership he has shown in this area.

The second area that I would like to mention is the fact that, in so many areas, the trade laws have simply not proven to be effective—our own trade laws. I am not going to discuss that broad range. The committee is aware of many of the problems.

The particular one that I would like to give some emphasis to is section 201, the escape clause, which I see—I think in a way, it is misnamed. I suspect that really the name of section 201 should be safety valve, because an effective use of 201 really assures that we can have an open trading system, that public opinion will not turn against it completely. It allows us to take action when trade is so disruptive that actually it could cause a total turnaround in American public opinion.

We believe it should be strengthened and strengthened visibly. One of the ways that we have suggested to make it more effective, so that its purpose is actually accomplished, is the option of having the modernization clause attached to assure that after a period of relief that industry is able to become competitive, a world-class industry, to resume its place in the American market.

At the present time, as you know, 201 occasionally does produce some sort of relief, but too often the industry—at the end of the period of 3 years or 5 years—simply sinks back into the same problems that it had before.

We think that the option of a modernization clause would be extremely effective in making 201 fulfill its actual promise.

Particularly, I might add, to assure that industries have the kind of income, have the kind of cash flow during that period, not only to produce a paper profit, but also to reinvest, to reinvest in the new technology and the new capital which is necessary to make it a world-class competitive industry.

I think this is the kind of yardstick we should apply, to make sure that American industry can survive.

H.R. 1950, as the chairman knows, is a generic bill and this committee is dealing with the broad range of trade problems. And I would like to congratulate the chairman particularly for his leadership, that this committee is looking at the impact of American trade in as broad as possible way, not simply picking one or two issues but looking at all of the problems that make up the pattern of American trade.

Obviously, it does not address the immediate emergency of the trade deficit. And perhaps we should also be looking at that particular problem.

But certainly, the need of a generic trade bill which deals with the trade problem as a whole, I think, is an extremely important one and I would like to congratulate the chairman for his leadership in this committee, for responding to it so vigorously and so effectively.

Thank you.

Chairman GIBBONS. Thank you, sir.

As you can tell, I am nursing a little cold today and have a little trouble communicating, but I listen well and I appreciate that.

Mr. MILLIAN. Mr. Chairman, I am Ken Millian, vice president of W.R. Grace & Co.

As you know, Grace is one of the 10 industries represented in LICIT. We also belong to just about any other organization you have on your agenda this morning. It is safe to say that the Gibbons bill and the whole process of looking at trying to level the playing field has given many of us many hours of discussion in the last 2½ years.

We commend you for your leadership in this area and your effort in pulling together a broad reform package.

I think Howard covered two parts of the bill that we would like to look at. I might, if you agree, talk about strengthening the authority of the U.S. Trade Representative and then spend a minute or two on natural resources and 301.

LICIT believes that one of the most important requirements for U.S. trade policy is giving stronger authority to our chief trade spokesman, the U.S. Trade Representative. LICIT proposes that the decisionmaking authority be transferred from the President to the U.S. Trade Representative in the following areas: Section 201, dealing with import relief; section 301, the enforcement of U.S. rights; section 337, patent and copyright protection; section 406, market disruption from Communist countries; and the administration of the GSP Program.

We note that the subcommittee's discussion draft transfers authority from the President to the U.S. Trade Representative in section 201 cases, and gives the Trade Representative decisionmaking authority in section 301 cases—although the President retains the discretionary authority to take final action.

LICIT believes that the subcommittee should consider a greater transfer of authority to the U.S. Trade Representative than that contemplated in the discussion draft. We recognize that the administration opposes transferring authority to the U.S. Trade Representative; however, the issue is not one of lessening the President's authority, but rather of strengthening the authority of the U.S. Trade Representative.

The Trade Representative serves at the pleasure of the President, is a member of his Cabinet, and is answerable to the President for his actions. Transferring authority to the U.S. Trade Representative accomplishes, in our view, three important objectives:

First, it helps to depoliticize the decisionmaking process in any trade action.

Second, the President is not the only one taking action against a foreign country. Foreign countries do object to Presidential action taken against their trade as a highly politicized matter.

Third, in our view, this transfer would increase the authority of the U.S. Trade Representative with respect to other Cabinet officers who have a wholly different agenda from trade, as many of us who have worked in this area know, much to our chagrin.

Finally, it increases the negotiating authority of the U.S. Trade Representative with foreign countries because they know that he has the authority to act on his own. So for these reasons we would ask you to restudy that and perhaps broaden the bill a little.

We have worked through the natural resource problem with you and the committee. I will not take time to discuss that. I know that the natural resources bill is out of your committee. We appreciate your efforts in that. We certainly know that the bill was passed in 1984 by a strong bipartisan majority in this House. Also, for the lack of one vote, it would have come out of conference.

However, there is another problem that has been identified in our examination of the natural resource problem. That is the discriminatory process occurring in capital financing to build and operate unnecessary and uneconomic plants. In certain countries this

distortive practice goes hand in hand with natural resource subsidies. Foreign governments and, in some cases, multilateral lending institutions provide below-market-rate financing to build plants in the name of economic development. So long as these plants are built only for internal consumption, they may not directly distort world trade. However, when such plants are built wholly or partially for export, a different result occurs.

The crux of the problem is discrimination. Foreign governments are subsidizing capital and natural resource inputs in a discriminatory manner to construct and operate excess productive capacity in certain commodities. Such activity is oversupplying world markets and depressing commodity prices, causing injury to efficient U.S. producers. The inefficient U.S. producers, as we know, in many cases are already out of the picture. We are talking here about injury to efficient U.S. producers.

Such capacity would not be built and operated by private producers and private companies. It fails to recover the market cost of capital and market cost of natural resource inputs. Yet governments are continuing to undertake uneconomic investments which cannot be justified in the world marketplace. In this way, governments are shifting the burden of inefficiencies and distortions in their own economies onto industries in other countries which must respond to commercial conditions in the marketplace.

Governments engaging in world trade must be required to function on the same commercial basis as private producers engaged in world trade. Capital and material must be provided on commercial terms and considerations. This is particularly the case for state trading and state enterprise under article XVII of GATT.

We all talked this morning about the fact that your discussion draft and our modernization bill both walk around the problem of what to do with the NME's. I think there should be some kind of a prize if we can find our way out of this dilemma, because it's obvious that the surrogate country approach just isn't ever going to work.

Chairman GIBBONS. I agree.

Mr. MILLIAN. As one of our lawyers said, that dog just won't hunt.

Unfairly traded imports can depress prices. This is another factor that we have been trying to illuminate. The commodity market is different. You have to deal and look at it differently in international trade. It must be realized that the benefits of lower prices from unfairly traded imports are transitory, at best.

Once these governments are able to shut down enough U.S. production in these commodities, supply and demand will be back in balance and prices will rise. Then if U.S. producers reenter the market to regain their market share, the market will be oversupplied and prices will once again be driven below production costs.

Private producers simply cannot survive in such a distorted marketplace. However, government industries or government-supported industries can absorb the kind of losses produced by such distorted markets and can drive private producers out of the marketplace. We all know that there are nations in this world which build capacity to earn dollars. This is not the private sector approach

that considers the real cost of capital and materials employed in building such plants.

The natural resource legislation has been called protectionist by opponents. Our position is that the real protectionists are the governments which use natural resource subsidies to protect their own industries from market forces.

I would like to finish, if I may, Mr. Chairman, with a comment or two on section 301.

It has been suggested that section 301 of the Trade Act of 1974 provides an adequate tool to address discriminatory pricing and access to natural resources and, presumably, to capital financing. Officials of the Department of Commerce and the U.S. Trade Representative's Office testified before this committee that section 301 would provide authority for the President to act.

However, because it is discretionary, section 301 does not require the President to act. The administration also opposes any amendments to section 301 that would clarify the President's authority to act when an unreasonable and unfair trade practice is found to exist.

However, we hope that the increased trade awareness on the part of the administration and the stirrings of what we have begun to see, both in the Department of Commerce and, even more importantly, under the leadership of Ambassador Yeutter, will lead to more useful applications of existing trade law. We hope they will work with your committee, Mr. Chairman, to make the revisions to make these laws effective.

This concludes our prepared remarks. We again commend you for the broad approach to the trade reform laws that you and your committee are working on, and certainly I think Howard and I would be willing to answer any questions.

Chairman GIBBONS. I see we have our friend Ambassador Wolff there at the table. Does he have a statement, or is he just there to assist you?

Mr. WOLFF. I don't have a statement prepared this morning, but I would like to say a word or two, Mr. Chairman, if I might.

Chairman GIBBONS. Certainly.

Mr. WOLFF. First, I would like to compliment you and the members of the committee and the staff for the breadth of the approach that you have taken, and for the initiative and the leadership shown. The country badly needs an overhaul of the way it does its trade policy formulation and its trade statutes need repair.

A couple of points which were in H.R. 1950 that are not addressed directly in the committee outline include the following, which I think are important:

The Congress ought to state clearly what U.S. trade policy is meant to be. It is not clear what that policy is today. If it were articulated by the executive branch, I am not sure it would find favor with the majority of the trade committees of the Congress, or the Congress itself.

There ought to be a procedure for establishing trade priorities in this country, as well as specific policy objectives. We have suggested that there be a process of consultation with the trade committees of the Congress, with a vote by the committees on whether the agenda set by the administration is an appropriate one. It would

not be binding, but it would at least give the executive branch an opportunity to formulate priorities early in each Congress or early in each year, and have an opportunity for the Congress to express itself.

There has to be someone to have a partnership with, and the delegation of authorities to the U.S. Trade Representative is something that we very much applaud. We would include in that delegation of authority section 337, section 406, and the other trade authorities that are currently given to the President like the generalized system of preferences.

These kinds of decisions ought not to be on the President's desk. Whether Peru gets a tariff of 2 percent or zero on a particular item is not a matter for Presidential consideration.

We applaud the notion of the Congress setting detailed negotiating objectives for any new negotiations. We would hope that this would include monetary and debt objectives, as is indicated in your outline. We would hope that the analytical capability of the Government is enhanced. Gramm-Rudman may make that difficult, but right now we have a lot more people focusing on a number of other regulatory areas in the Government than have ever focused on trade.

And last, the chairman has mentioned some changes in countervailing duties. We have some suggestions in that regard that we would be glad to elaborate on at a later point. We feel that these laws could also be improved.

Again, we think that trade law reform modernization enacted in this Congress is really essential, and very much applaud the work of the committee.

[The statement of LICIT follows:]

STATEMENT OF

HOWARD D. SAMUEL
PRESIDENT
INDUSTRIAL UNION DEPARTMENT, AFL-CIO

AND

KENNETH Y. MILLIAN
VICE PRESIDENT
W.R. GRACE & CO.

On behalf of the member organizations of LICIT I want to commend you, Mr. Chairman, and the other members of your subcommittee for undertaking these hearings on reforming U.S. trade laws. We hope that expeditious action by your subcommittee can result in an effective and responsible trade bill that will enjoy wide, bipartisan support throughout the Congress and the country.

My name is Howard Samuel. I am President of the Industrial Union Department of the AFL-CIO and co-chairman of LICIT. Testifying with me today is Kenneth Millian, vice-president of W. R. Grace & Co. Accompanying us is Alan Wolff, counsel to LICIT.

The work this subcommittee is undertaking is extremely important for our country. Our international trade position has been deteriorating for many years now, resulting in the loss of more than 3 million jobs and hundreds of billions of dollars worth of domestic production. The past three years have resulted in a cumulative trade deficit approaching $350 billion.

Our greatest weakness has been an attitude that international trade is not important for our economic well-being. This attitude has been changing, due to trade's increasing influence in the lives of many Americans. But our policies toward trade have changed hardly at all. Our trade laws stand in great need of being updated to match the scale and nature of today's international realities.

America has to take international trade seriously. It makes a difference if American companies are kept out of other countries' markets when the firms of those other countries have access to our markets. It makes a difference if other countries subsidize specific activities to unfairly gain a position in world trade at the expense of American firms and workers. It makes a difference if we fail to help our industries modernize and adjust to new forms of international competition.

There is nothing permanent about comparative advantage. The world changes rapidly and new technologies, production processes and products are constantly being introduced and improved upon. We cannot have a static, passive view toward world commerce. If we have a competitive advantage in one industry today, there is no assurance that it will not be lost. If we have a competitive disadvantage today, there is no law of economics that says the disadvantage is permanent. As a result, our trade policy must move from being reactive to being active. We need to help shape the world economy, not just respond to it.

That is why LICIT believes these hearings, and the legislation the subcommittee is drafting, are so important. Comprehensive trade law reform enacted into law this year will not directly address the current trade deficit of almost $150 billion. It is not a short-term solution to our current trade difficulties. The size of the present trade deficit is related to macroeconomic and other factors, not merely to unfair trading practices and closed foreign markets. Reducing the deficit requires additional policy actions that are not the subject of this hearing. However, this legislation can lay the foundation for our country's approach to trade and the world economy into the next century.

LICIT strongly supports the subcommittee's intention to move ahead quickly with broad, generic trade legislation. We are especially encouraged by the scope and content of the legislation described in the discussion draft circulated by the Chairman. Indeed, many of the issues that you, Mr. Chairman, first took the lead on in the last Congress such as targeting and natural resource subsidies form central parts of this draft. We also appreciate the fact that the draft incorporates or addresses most of the issues in the Trade Law Modernization Act (H.R. 1950).

The Trade Law Modernization Act was introduced last April by Congressmen Guarini and Duncan of the Ways and Means Committee. We appreciate their leadership in having the foresight and wisdom to sponsor broad, generic trade law improvements at a time when such legislation was given little chance of action in either house of Congress.

We understand that the subcommittee will be holding more detailed hearings later this month and in April on specific issues that are to be included in the comprehensive trade reform bill. Today we would like to highlight four specific issues that LICIT believes should be principal components of any comprehensive bill, and submit to the subcommittee more detailed remarks on specific issues at a later date.

EXPORT TARGETING

A crucial, and long neglected area of U.S. trade policy is predatory export targeting practices of foreign countries. From machine tools to fiber optics, semiconductors and computers, foreign countries have sought to unfairly promote the export expansion of their own industries at the expense of firms and workers in the world's largest and most open market -- the United States.

The discussion draft that you have circulated, Mr. Chairman, makes such practices actionable under section 301

of our trade laws. The draft also provides for "mandatory retaliation" where the export targeting practice "nullifies or impairs" benefits that the United States has received under trade agreements.

We all owe you a debt of gratitude, Mr. Chairman, for putting export targeting on the trade agenda of the country in the last Congress. At that time you were suggesting an approach to targeting under the countervailing duty law. Your objective was to provide an automatic remedy where it was determined that targeting had occurred and where it had been shown that the practice injured or threatened injury to American firms and workers. The only drawback to that approach was the availability of only one option for response -- the imposition of countervailing duties.

We believe the approach under section 301 is more flexible and appropriate in terms of the responses available. However LICIT believes that your procedural approach under the countervailing duty law should be kept as intact as possible. That is why LICIT has proposed introducing an injury test for export targeting cases under section 301. If targeting is found to exist, and if injury is present, action to fully offset the cause of injury would be mandatory. However the range of possible actions under section 301 is much broader and more flexible. In the Trade Law Modernization Act LICIT has even suggested options for response that include wholly domestic measures to strengthen the competitive position of U.S. producers in world export markets for targeted industries. We would recommend that you consider this approach as an alternative to trying to decide if "nullification or impairment" exists.

SECTION 201 CHANGES

LICIT supports many of the changes outlined in the discussion draft. Our biggest concern is the procedures outlined for developing an "adjustment plan" for a petitioning industry. This was probably one of the most discussed and debated issues in the LICIT coalition when we were drafting H.R. 1950. The problem here is to get specific commitments from industry and labor for actions they intend to carry out in the adjustment period while not imposing direct government intervention into the union hall or corporate board room. In addition we wanted to avoid any potential antitrust problems.

Under the approach in H.R. 1950 the "advisory group" would develop an assessment of current problems and a strategy to improve the industry's competitiveness, outlining steps that firms and workers in the industry could usefully undertake to meet the objectives in the assessment and strategy. The advisory group as a whole avoids specifying

what any individual firm or union will do. Actions that individual firms and unions intend to undertake to meet the objectives in the assessment and strategy are specified in individual confidential submissions to the government.

The discussion draft places the ITC in the position of approving any "plan" that is developed by the petitioning industry. This means that the ITC determines: (1) injury, or threat of injury, (2) the acceptability of the "plan" and (3) the relief that will be granted to the industry (since the USTR has little discretion in changing the recommended relief). We believe that this places too extreme a burden on a single independent agency, especially as regards approval of the adjustment "plan." We recommend that the ITC, rather than passing judgment on any "plan", take the assessment and strategy and individual confidential submissions into account when recommending the appropriate relief for the industry. The actual development of an assessment and strategy for the industry will have already included the input and concurrence of the USTR and the Secretaries of Commerce and Labor (and other cabinet officers where considered appropriate by the USTR). Consistent with these considerations, an ITC affirmative ruling should not automatically trigger relief, although we would fully expect that an industry going through a successful adjustment track procedure with Executive Branch participation would have a better chance of getting more appropriate relief. There will be situations in specific industries where a majority of the industry will not be able to reach a consensus on the need for adjustment. The workers or firms in these industries should not be penalized for a situation out of their control.

We strongly support removing expedited TAA assistance as an option under section 201 and making it a "right" when there is an ITC determination of serious injury.

With respect to the injury standard, the discussion draft recommends keeping the current standard of "substantial cause" while clarifying that a general economic recession cannot be given as a cause of injury that is greater than imports (as in the 1980 auto decision). While we believe that this change goes a long way in taking care of interpretive and consistency problems with the current standard, we still believe that problems will remain with different members of the Commission using different and inconsistent methodologies to determine "substantial cause." The proposed standard will now be: "substantial cause means a cause which is important and not less than any other cause except for a general economic recession." Comparisons will still be required about the relative economic effect of various "causes" of an industry's difficulties. How important are imports compared with changes in patterns of demand and other factors. In some cases the answer may be obvious. In most cases, as in the past, there will be a number of

interrelated factors accounting for the industry's economic difficulties. These factors will be difficult to untangle. And it will be almost impossible to quantify the importance of imports compared to any other factor. As a result, LICIT still has reservations about keeping the qualifier "substantial" for causation, which goes beyond the GATT standard that "imports" should be a cause of serious injury.

In addition, Mr. Chairman, we think it is vitally important, in today's increasingly interdependent world, that the ITC should take account of the trade-distorting policies of other countries in determining threat of injury under section 201. In many important industries such as automobiles or steel we confront a world where many or even all other major markets are closed by formal or informal import quotas. Producers in other countries are also likely to be supported in trade-sensitive industries by subsidies, export targeting programs, or other export-promoting practices which will increase the flow of exports seeking outlets in the U.S. market. America can no longer afford to simply ignore these increasingly widespread realities of international competition; they are unlikely to go away, and we can not wish them away. But if we continue to act as if they didn't exist, American workers and industry will suffer -- needlessly and unfairly.

STRENGTHENING THE AUTHORITY OF THE U.S. TRADE REPRESENTATIVE

LICIT believes that one of the most important requirements for U.S. trade policy is stronger authority for our chief trade spokesperson -- the U.S. Trade Representative. LICIT has proposed that decision-making authority be transferred from the President to the U.S. Trade Representative in the following areas: section 201 (import relief), section 301 (enforcement of U.S. rights), section 337 (patent and copyright protection), section 406 (market disruption from communist countries) and the administration of the Generalized System of Preferences (GSP) program.

We note that the subcommittee discussion draft transfers authority from the President to the U.S. Trade Representative in section 201 cases and gives the U.S. Trade Representative decisionmaking authority in section 301 cases, although the President still retains the authority to take any action.

LICIT believes that the members of the subcommittee should consider a greater transfer of authority to the U.S. Trade Representative than contemplated in the discussion draft. We recognize that the Administration opposes transferring authority to the U.S. Trade Representative. However the issue really is not one of lessening Presidential authority. Rather, it is strengthening the authority of the

U.S. Trade Representative. The U.S. Trade Representative serves at the pleasure of the President, is a member of his Cabinet, and is answerable to the President for his actions.

Transferring authority to the U.S. Trade Representative accomplishes three important objectives: First, it helps to depoliticize the decisionmaking process in any trade action, The President is not the one taking action against a foreign country. Foreign countries do object to Presidential action taken against their trade as a highly politicized matter. Second, it increases the authority of the U.S. Trade Representative with respect to other Cabinet officers who have a wholly different agenda from trade. Finally, it increases the negotiating authority of the U.S. Trade Representative with foreign countries because they know that he has the authority to act on his own.

NATURAL RESOURCE SUBSIDIES

The justification for an amendment to the countervailing duty laws has been well-established. The natural resource issue has been examined and debated by the Ways and Means Committee for the last four years. Legislation addressing the problem was approved overwhelmingly by the House of Representatives in 1984 with strong bipartisan support.

In essence, the natural resource subsidy amendment says that raw material inputs provided by governments to producers must be priced at their real market value. This is a fundamental principal of free trade, both in the international trading rules endorsed by the United States and in the trade laws enacted by the United States. Governments should not set prices in a discriminatory manner that creates an unfair advantage, distorts trade, and injures U.S. and other free market producers.

While the natural resource subsidy amendment addresses only raw material inputs, the same discriminatory process is occurring in capital financing to build and operate these uneconomic plants. In many cases, these distortive practices go hand-in-hand. Foreign governments and, in some cases, multilateral lending institutions, provide below-market-rate financing to build plants in the name of economic development. So long as these plants are built only for internal consumption, they do not materially distort world trade. However, when these plants are built wholly or partially for export, a different result occurs.

The crux of the problem is discrimination. Foreign governments are providing capital and natural resource inputs in a discriminatory manner to construct and operate excess production capacity in certain commodities. This

activity is oversupplying world markets, depressing commodity prices and injuring efficient U.S. producers. Such capacity would not be built and operated by private investors and producers. It fails to recover the market cost of capital and the market cost of natural resource inputs. Yet governments are continuing to undertake uneconomic investments which cannot be justified on the basis of any reasonable commercial benchmark in the world marketplace. In this way, governments are shifting the inefficiencies of their own economies onto industries in other countries which must respond to commercial conditions in the marketplace.

Governments engaging in world trade must be required to function on the same commercial terms as private producers engaging in world trade. Capital and material must be provided on commercial terms and considerations. This is particularly the case for state trading and state enterprise under Article XVII of the GATT.

Unfairly traded imports can depress prices in the U.S. market. It must be realized that the benefits of lower prices from unfairly trade imports are transitory at best. Once these governments are able to shut down enough U.S. production in these commodities, supply and demand will be back in balance and prices will rise. Then, if U.S. producers re-enter the market to regain their market share, the market will be oversupplied and prices will once again be driven below production costs. Private producers simply cannot survive in such a distorted marketplace. However, government industries or government-supported industries can absorb the kinds of losses produced by such distorted markets and can drive private producers out of the market permanently.

The natural resource legislation has been called protectionist by its opponents, who apparently believe that any legislation or trade action taken against imports -- even unfairly traded imports -- is protectionist. This kind of thinking is not expressed in the trade policy of the United States nor in the GATT. In fact, the protectionists are the foreign governments which subsidize and underwrite uneconomic investment, production and trade for their own purposes. Indeed, their protectionist policies discriminate in the use of capital and natural resources in favor of their own producers and to the detriment of privately-owned competitors in other countries. These governments have created artificial advantages for themselves; because these advantages are based on market forces, these governments have no choice but to protect their policies from the discipline of the marketplace.

It has been suggested by some that Section 301 of the Trade Act of 1974 provides an adequate tool to address discriminatory pricing and access to natural resources and,

presumably, of capital financing. Officials of the Department of Commerce and the U.S. Trade Representative's Office testified before this Committee that Section 301 would provide authority for the President to act.

However, because it is discretionary, Section 301 does not require the President to do so. The Administration also opposes any amendments to Section 301 that would clarify the President's authority to act when an unreasonable and unfair trade practice is shown to exist.

However, we hope now that increased trade awareness on the Administration's part will lead to more useful applications of existing trade law, or, where necessary, revisions to make the laws effective.

Mr. Chairman, that concludes our prepared remarks. We would be happy to answer any questions that you or other members of the Subcommittee might have.

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Chairman GIBBONS. Thank you, Mr. Ambassador.

We will go next to John Meagher. John, we welcome you here, representing the Basic Industries Coalition.

STATEMENT OF JOHN K. MEAGHER, VICE PRESIDENT, GOVERNMENT RELATIONS, LTV CORP., AND CHAIRMAN, BASIC INDUSTRIES COALITION, INC.

Mr. MEAGHER. Thank you, Mr. Chairman. I appreciate the opportunity to be here today, and I particularly want to thank the members of your staff for not only allowing me to testify at these hearings, but to allow me to testify this morning. I am honored and privileged to be here on behalf of the Basic Industries Coalition, which is a group of several trade associations and companies that are concerned about the competitiveness aspects of basic industries.

I come here to talk not just about what ought to be done in the trade area, but what ought not to be done in the trade area.

Our conclusion is that the fundamental problems of basic industries are not problems of the trade laws. Those need to be fixed. There are problems that we will cite that we think need adjustment, but the fact of the matter is that the fundamental problems are not the traditional trade problems. They lie elsewhere and they relate basically to the cost of production in the United States versus the cost of production overseas.

That is the basis, in our view, of why there is a trade crisis today, and the trade laws are simply the end result or the end solution that people seek when other policies and other factors have entered into a situation that make it intolerable.

None of the problems we cite ought to be done away with, or ought to be repealed from the laws of this country. Rather, they need to be considered in a competitiveness context. What are they?

There are costs of environment. $800 billion has been spent on the environment since the environmental laws were enacted, and that is a huge cost, and most of our trading competitors don't have that cost.

The costs of antitrust—most of our competitors don't have antitrust laws that are of the type we have. In contrast, we have had a "fortress America" mentality in this country, as far as antitrust laws are concerned in which we have looked at the domestic market to consider whether or not competition is real or not. The LTV-Republic merger case is one of the first cases that looked elsewhere, looked to the fact of international marketplace to determine competitiveness.

The administration has recently come up with a package which, in part, addresses this issue. But the fact is that our cost of production has been higher because we haven't been able to confine them in the way that other countries have.

Third is our tax laws, as you cited. We have a tax law that simply taxes exports and doesn't tax imports, that taxes capital very heavily, and we need a new tax law. Congressman Schulze has got the one that we endorse. It's called the Business Alternative Minimum Tax. We need to tax consumption, we need to tax imports, and we need to subsidize exports through our tax system. I'm not saying that that can be done this year, but that's something

that seriously impacts on our ability to compete and our cost of production.

Social insurance laws are very heavy cost in this country. They are borne in other countries either by value-added tax, a broadly-based tax, or they don't exist in Third World countries. Here they are a very heavy cost, and they are going to get more costly.

In our company, we have two retirees for every worker. Our pension costs are choking us, very honestly, and that will get worse as the population grays and machines replace people. That's something that is a factor in the cost of production that raises our costs versus the costs in other countries.

Credit policies. That's simple. The cost of capital in Japan is half what it is in the United States. The cost of capital in Europe is a third less than it is in the United States. You don't need to say any more about that. It speaks for itself, because it's heavily subsidized.

Adjustment policies. Our adjustment policies in this country basically come through the Tax Code, and that means that we can write off plant and equipment that we close if we have a tax base against which to write it off. Many industries, like the one that I work for, the steel industry, which had $1 billion in losses last year, doesn't have a tax base against which to write off those plants and equipment, or as much as we should. And the result of that is that we keep outmoded plant and equipment longer than is indicated. We don't have the capital to go in and modernize. And so that is a major cost of production.

And finally, foreign assistance programs. I noticed this morning in the paper that the Eximbank has made the first loan to a domestic industry in its history, to Allis-Chalmers. Maybe our friend Barber Conable can help with the World Bank. But the fact of the matter is that we American taxpayers have been buying bullets, handing them over to somebody else, who have then turned around and shot them against us. That is another major factor in the cost of production.

All this, again, is not to say that we should get rid of our environmental laws. Everybody wants clean air and clean water and clean rivers. Nor should we do away with our pension systems. That's a function of the level and the sophistication of our society. But the fact of the matter is that we need to look at these in a somewhat more generic way than we have. We need a mechanism to deal with them.

Our conclusion is that what is really needed is a congressional mechanism to focus on the question of industrial competitiveness. Some of my friends tell me what I am about to say is going to be controversial, but I am going to say it, anyway. I think the Congress needs a committee on industrial competitiveness. It needs a structure to look at the question of competitiveness in a generic way, a funneling mechanism, so that we can begin to deal over the long term with the question of cost of production in the world. The trade laws are simply the last place that that's going to be dealt with, and it is going to be dealt with in a very rough and specific way.

The trade laws are not designed, nor can they become a permanent part of the economic structure of commercialism in the world. And yet when an industry is faced with the failure of other poli-

cies, of its ability to compete, it has no other choice but to go to the trade laws and say "give me help."

Our view is that that process of looking at the more fundamental issues needs to take place in a more targeted way and Congress can do something about that. And that is why we suggest the establishment of some sort of a mechanism—maybe it's a joint committee—to do that.

This was done in the Carter administration with the Ad Hoc Committee on Energy when there was a crisis in energy, and that crisis occasioned the Ad Hoc Committee on Energy which served as a funneling mechanism for the various committees of Congress to deal with policies that were part and parcel of the energy problem. That worked well. I think you need to look at a permanent committee structural change—not take jurisdiction from the Ways and Means Committee and give it to some other committee nor to move the jurisdiction from one committee over to this committee. That isn't the point.

The point is that we need a structural change, I believe, and I would agree with Alan, probably in the executive branch as well, but we need a structural change in the Congress to deal with the question of competitiveness over a long term.

The second thing that I think needs to be done in the long term is to do something about the negotiating objectives for the next round of trade negotiations. The fact of the matter is that what is on the table in Geneva are basically issues that do not relate to basic industries; they are issues of service industries, intellectual property.

We all know what they are, Ambassador Yeutter has testified on them, and they are worthy objectives. However, I have had a little experience in this business and I know that in any negotiation there are tradeoffs, and what I see being traded off are basic industries. I think that there need to be specific negotiating restrictions or negotiating objectives placed in the authority provision of this legislation to say that basic industries are not going to get traded away. We can't afford it. We simply cannot afford to be traded away at this time in this crisis we are in.

Now, in the short term, there are a couple of things that I think you need to look at. I think that the outline you provided is sound. I think it provides the basis for a good trade reform package. However, I don't happen to think that that is enough. I think there needs to be a political statement made, and the political statement has to be made not only to our foreign trading competitors but it has to be made to the American people, as well.

I don't think that the American people and the workers of this country, and certainly not the industries are going to be satisfied with legal reforms, important as they may be. Rather, they need some commitment to a program in a generic way, which will deal with the trade deficit.

First, we need to look at how we approach trade negotiations. We think that you need to start to really move on a country-by-country rather than product-by-product basis. We have been nickeled and dimed to death on a product-by-product basis for years, and the result is a huge trade deficit.

Congressman Schulze has a bill in that respect. So does the chairman and Mr. Gephardt. We recommend a 20-percent tariff over 5 years that can be negotiated away, with a follow-on tariff that is 25 percent for 5 years unless it is negotiated away.

The reason for that is to insure against failure as has happened in the Steel Stabilization Program.

We urge the establishment of a follow-on automatic mechanism that will provide the basis for compliance. In the steel case, what we have is a program that simply isn't working. When Congress put it into effect, steel imports were 25 percent. Now they are a little less, but not much less than 25 percent.

The reason is that the program rewards cheaters and penalizes those that comply, and we think that there needs to be an automatic mechanism to deal with trade agreement enforcement to preclude that.

The second part of the program we recommend is that the funds from any generic solution like a tariff ought to be used for a major trade adjustment assistance program. Robert Lawrence of the Brookings Institution has outlined one recently that we think is important and that touches the major elements.

This is where we come out, Mr. Chairman. I appreciate the opportunity to be here and I will be glad to answer any questions you might have.

[The prepared statement follows:]

STATEMENT OF JOHN K. MEAGHER, VICE PRESIDENT, GOVERNMENT RELATIONS, LTV CORP., ON BEHALF OF THE BASIC INDUSTRIES COALITION, INC.

Mr. Chairman, members of the Subcommittee, my name is John Meagher. I am a Vice President of The LTV Corporation and Chairman of the Basic Industries Coalition (BIC). The coalition is made up of companies and trade associations interested in and concerned about issues of competitiveness of America's basic industries. While BIC has been concerned primarily with taxation issues, it has spent a considerable amount of time in the last year studying the international competitiveness problem, and inevitably that leads to the trade issue. The recommendations herein stated are not official BIC policy, but do, I believe, represent a fair appraisal of where our work has led us.

Some of the recommendations in this testimony are broader than the purview of the legislation you are considering, but it seems important to state not only what the problem is, but also what it is not.

Most of the so-called "trade" problems plaguing basic industries are not "trade" problems in the traditional sense. They are not, for the most part, based on a failure of the existing trade law since many basic industries have won cases and relief from the International Trade Commission (ITC) and/or have enjoyed voluntary restraints by foreign suppliers (cars) or not so voluntary restraint agreements (steel). Rather, the problems of basic industries' ability to compete are grounded in policies and events more fundamental to the cost of production in this country versus the cost of production overseas. While traditional "trade" matters impact on this comparative cost, other policies have and continue to play a larger role in rendering domestic basic industries non-competitive. Having stated the above, however, it probably is true that the short-term remedy for this situation lies in the traditional trade area.

Causes of Problems of Basic Industries

Most basic industries in America are impacted by severe foreign competition in the domestic market place from both developed and undeveloped countries. The main reason for this is that the American cost of production is higher than the costs of our trading partners. In many instances, this is due to subsidies on the part of the foreign government. These range from the building of factories to tax breaks and low-interest loans. While many of these subsidies are hard to prove because of their arcane nature, many are provable under our current trade laws and have become the basis for quotas, tariffs, etc., being imposed on foreign goods. Efforts to end these subsidies should continue, but, in my view, this will be a losing game for America since by the time they are provable, the damage has usually been done and the domestic industry is in serious trouble.

The other problems of basic industries in America, unfortunately, are grounded in our own domestic policies. These policies, it should be noted, were well intended and usually designed to deal with a specific social or economic problem on which there was national agreement. However, more often than not, they had ancillary results that contributed to the decline in domestic competitiveness.

Briefly, they include:

1. Environmental laws. America has spent over $800 billion on environmental protection. While these laws are valuable and highly supported by the American people, there is no denying their impact on the cost of production here. Few countries with which we are competing have these so their industries have a cost advantage.
2. Anti-trust laws. Historically, our anti-trust laws have been grounded in the notion of determining competition based soley on the domestic market. As a result, American industry has been denied the right to achieve efficiencies of cost by mergers whereas, in other countries, this isn't the case. The Administration's recent recommendations on anti-trust reform repesent a major step in the right direction in this respect.
3. Tax laws. Our tax system was historically based on the idea that American companies built and sold domestic goods (and services) for the American market only. Thus, with the exception of the now defunct DISC, we have neither subsidized exports nor taxed imports. Also, our tax laws tax capital inordinately vis-a-vis our competitors. Finally, our competitors don't tax exports of their own domestic firms. The bottom-line result is a higher cost of production here.

4. Social Insurance Laws. In most of the industrialized countries, extensive public social insurance programs funded by a VAT are in place. In Third World countries, few programs of this type exist. In contrast, in America social insurance programs are paid for half by government and half by business. (This assumes a 50% corporate tax rate). However, the costs of health insurance, disability, pension, etc., are a major cost factor to American business, and as our population grows older, it will be an increasing burden. At LTV, we have two people on pension for each worker.

5. Credit Policies. The cost of capital in the U.S. is twice as high as in Japan and one-third higher than in Western Europe. With few exceptions, our government does not subsidize credit directly (it does so indirectly through the tax system) whereas in the countries with which we compete, direct credit subsidy is a way of life and a major governmental function.

6. Adjustment Policies. Since the demise of the Trade Adjustment Assistance programs for individuals and firms, we have no meaningful adjustment policies. As a result, many businesses retain obsolete capacity for too long thus lessening productivity and keeping operating costs high. In contrast, in most foreign countries one of two actions occur.

6. Adjustment Policies (continued)

Either the government directly subsidizes the industry which has excess or outmoded capacity since this is cheaper than the cost of putting workers on the social insurance program, or they pay the industry to shut down. We do neither. Recently, Congress nearly went in the opposite direction by almost enacting plant-closing legislation.

7. Foreign Assistance Programs. Well-intentioned expenditures such as IMF and World Bank and Ex-Im Bank loans helped our competitors but hurt our domestic industries. Essentially, American tax dollars have been used to build foreign capacity which builds cheap goods for export to the U. S. market. These, in turn, compete with domestic products which are taxed and receive little or no subsidy.

These are the major factors which increase our cost of production over our trading partners. There are others but these are the main ones. (Note - direct labor costs are not included because, in my view, they are a decreasing factor and more a function of the sophistication of our society than direct government policy.)

Until we come to grips with the variances caused by these policies, we will continue to lose our ability to compete not only overseas but here at home. But, "coming to grips" doesn't mean eliminating or severely reducing environmental laws or pension programs, for example. Americans want and need both, but we must take a long-range view of how the variances between our laws and "theirs" impact on cost of production and consider changes, where appropriate, to change our laws. Such a course change will not and cannot be done quickly. It will take years and will necessitate a change in mind-set about our commerical relations.

Ultimately, we need to enact a new tax system, for example, which taxes imports and subsidizes exports, that encourages savings and penalizes consumption, that is fair for all who do business or enjoy the fruits of America, not just those with a plant or store here. The Business Alternative Transfer Tax (BAMT) of Representative Schulze is such a system. It's enactment would greatly assist our industries to compete.

We need some relief in the pension area or it will choke American companies. Again, this must be done carefully and over a period of time.

We need to consider subsidizing domestic credit for business expansion as we do foreign industrial expansion.

Few, if any, of these policies can be changed to provide short-term relief, but they must begin. Since there is no single Congressional Committee nor unit with jurisdiction over the variety of issues herein mentioned, a new unit needs creation.

Long-Term Competitiveness Recommendation

The House should establish a Committee on Industrial Competitiveness as a permanent committee. Like the Budget Committee, such a unit would be empowered to develop policy changes to deal with American competitiveness and would be made up primarily of members from the committees with jurisdiction over the items to be considered -- Ways and Means, Banking, Public Works, Energy, etc.

In the mid-seventies the House established the Ad Hoc Committee on Energy which was a similar unit. It passed on the various elements of the National Energy Act as recommended by President Carter. That committee was single purposed. Competitiveness will remain a continuing and growing problem and thus needs a permanent structure. It can be the coordinating arm of the House on this issue.

Multi-Trade Negotiation (MTN) Objectives on Competitiveness

The Administration is seeking and will surely receive new authority to enter into new round trade negotiations (scheduled for next year). These negotiations will take 4 to 5 years to complete and then another year of Congressional action on the legislation to implement them.

The major issues likely to be discussed are non-basic industry issues including bringing services under the GATT, intellectual property issues and further efforts to reduce trade barriers. In any negotiation there are trade-offs. Historically, basic industries have fared poorly in these MTN's. This time, such a result must be precluded if basic industries are to survive.

The recommendation is that very specific negotiating objectives and/or authority restrictions be written into the law to protect basic industries in these negotiations. For example, no basic industry concessions should be granted to countries with trade surpluses with the United States above a pre-determined level. This will insure that any domestic actions to improve basic industries which are taken during the MTN won't be obviated by concessions in Geneva.

Conclusion - Long Term

The above-mentioned, long-term problems will not be fixed in a year. They require structural changes not only in our policies (like taxation) but in our governmental structures (like Congress) if they are to be solved. The two above mentioned solutions need attention now if we are to get out of the morass of huge trade deficits.

Short-Term Actions

Because the situation in basic American industry is so serious today, Congress needs to take certain short-term actions this year which can buy time while the long-term policy adjustments are taking place. A host of technical trade law proposals have been put forth by various arms of the Congress and many have merit. None, however, either offer immediate relief nor the political result necessary in the current crisis. This latter, in my view, is necessary for the Congress.

Simply, it must offer the workers and industries of this country more then technical legal changes which the average voter will neither appreciate or recognize as real to him or her. You have these before you, and they will be resolved in due course. Rather, the following is a series of recommendations grounded in the here and now of the fast- track trade legislation which is currrent.

First, it is important to reject that which isn't acceptable. That includes a series of quota bills for specific industries which desire protection. Also, it includes making wholesale changes in the tax legislation which the House has already passed. It ought to also include declaring certain normal foreign practices and circumstances as "unfair trade practices." The idea, for example, that lower wages for steel workers in Korea is an unfair labor practice makes little sense and doing so won't solve the problems of American steel. Korean wages -- like U.S. wages -- are a result of the overall economic level of Korean society, and it is hard to understand why we should penalize Korea for having a living standard less than ours.

It seems that we are better advised to approach our trade deficits from a generic standpoint -- particularly in the short term -- by trying to deal with our trade deficits with various countries on a country-by-country, rather than a product-by-product, basis.

Such an approach is implicit in two bills pending before the Ways and Means Committee -- HR 1139 (Rep. Schulze) would impose a 20% surcharge on all imports from any country unless after an agreement was reached with that country on its level of imports, Congress passed legislation implementing the agreement. HR 3035 (Rostenkowski-Gephardt) imposes a 25% surcharge on all imports from countries whose trade surplus with the U. S. is above 150%.

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Both approaches are generic although the Schulze bill is broader in scope. Both impose tariffs (not quotas) which will bring to the fore the economics of trade and directly increase the cost of foreign imported products. Both contain escape valves under which the surcharge can be lifted. Both are short-term, crisis-oriented proposals. It seems a combination of both is advisable.

Recommendation

Enact a five-year 20% surcharge on all products from any country with a trade surplus above a pre-determined level unless it is specifically negotiated away. Provide a second five-year 25% surcharge if no agreement is reached within the first five-year period. This will put immediate pressure on most countries to come to terms with their surpluses while at the same time helping the domestic industries affected. Also, it will begin the practice of requiring those countries to pay a price for the enjoyment of our market.

The funds received from this surcharge should be used to fund three programs:

1. A new trade adjustment assistance program for workers which would be triggered automatically upon an affirmative finding of the ITC in unfair trade cases.
2. A new tax base insurance program to insure communities against losses in their tax base which might be occasioned by imports. This would be available when a large employer closed a factory because of imports.

3. A new industry development fund to provide low-cost, long-term loans to domestic companies for new American plant and equipment. Such a loan would require a long-term commitment to the community where the plant and equipment is placed. This is not designed as a bail-out of already trade-impacted companies as much as a source of funds for companies anticipating trade problems. A new test for determining prospective trade problems as the basis for loan eligibility would be developed.

The theory of these programs and the tariff which funds them is that foreigners must pay for the enjoyment of access to our market.

Congressional Enforcement of Executive Branch Trade Agreements

In the course of attempting to resolve protectionist approaches to specific industry trade problems, Administrations have and continue to negotiate Voluntary Restraint Agreements to limit imports. In exchange, Congress usually agrees to drop protectionist legislation and the industry involved drops pending unfair trade cases. In other words, a tri-part deal is struck with each party contributing something to obtain the desired result.

In most instances, these VRA's never achieve the stated results, due in large part, to the fact that the Executive Branch is unable to negotiate enough agreements or insure adequate compliance of those negotiated. The recent steel VRA program is a case in point. Congress

and the President agreed to VRA's to bring steel imports from 26% to 18.7%. A year and a half into the program, steel imports remain at 25% primarily because many steel-importing countries refused VRA's and others are transhipping to exceed their quotas.

In such cases, Congress should legislate to enforce these agreements after a reasonable time period. Otherwise, those countries which have acted in good faith by agreeing to VRA's are penalized for their compliance while those which have failed to negotiate are rewarded for not having done so. The incentives should be reversed.

Recommendation

Congress should, in this trade bill, enact a provision automatically imposing quotas on countries which, after a reasonable period, do not comply with overall agreements. Such a mechanism would encourage early compliance and penalize those which fail to act fairly.

Conclusion

This paper is not as much about trade as it is about competitiveness. Trade is only one element in the competitiveness debate, yet it is the one most frequently discussed because in many instances it is the court of last resort. For industries which have had and are continuing to experience competitiveness problems there is often no recourse left but protectionism.

In the absence of changes in other policies to help America regain its competitiveness, reliance on protectionism through quantitative restraints will heighten. That is the reason these other policies must be reviewed, altered or eliminated over the long term. A Congressional mechanism to handle this process is necessary. Absent this, we will have more "Hollow Corporations" with less and less manufacturing done domestically. The ultimate result will be a reduction in our standard of living and our way of life.

In the short run, however, we have a right and duty to take those actions which will mean survival of our industries. A country-by-country tariff or surcharge of limited duration combined with enforcement of existing restraint programs is the best way to proceed. While some of our trading partners will complain about such a move, many will recognize the fact that if the American standard of living diminishes, their market (America) will decline as so will their own standard of living.

Chairman GIBBONS. Thank you.
Mr. Fox, go right ahead.

STATEMENT OF LAWRENCE A. FOX, VICE PRESIDENT FOR INTERNATIONAL ECONOMIC AFFAIRS, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. Fox. Thank you, Mr. Chairman.

I am Lawrence A. Fox, vice president of the National Association of Manufacturers for international affairs. NAM is the largest representative of American manufacturing in this country, and our members constitute in their production about 80 to 85 percent of the output of manufactured goods.

Mr. Chairman, I would like to commend you for these hearings and the thoroughgoing approach that the committee has outlined for reviewing U.S. trade law. We think 1986 is a very good year to settle a number of these problems in the trade law area so that we can get down to fruitful negotiations for dealing with our problems through international trade negotiations and so that we can turn attention in our country to enhancing our international competitiveness.

Let me say first with respect to the trade deficit itself, 1985 was a new record. It was $149 billion. Of that amount, one should recognize that 76 percent of that deficit is in manufactured goods. The heart of the trade deficit is in manufactured goods. For a while, our eye, perhaps, was distracted by oil or the declining exports for agriculture. Those are both serious problems and remain so, but the heart of the trade problem is in manufactured goods.

Last year we had a trade deficit in manufactured goods of $114 billion while our two foremost competitors, Japan and Germany, had global trade surpluses. In contrast with our deficit of $114 billion, Japan had a global trade surplus of $129 billion, and Germany had a global surplus of $65 billion in manufactured goods. Our bilateral trade deficit with Japan was approximately $50 billion.

Mr. Chairman, I have appended to my testimony four charts depicting the course of our trade deficit and demonstrating the decline in our competitiveness with respect to both countries and commodities, and I commend those charts for your attention. I won't repeat them now.

It is important to recognize that the increase in the American trade deficit is not just in one sector of manufacturing, not just in basic goods or textiles, in apparel, it is across the board. In 1985 the trade deficit in computer equipment and electronic components was $16 billion. We are supposed to be good at high tech items like computer equipment and semiconductors and related electronic equipment. The deficit was $16 billion, and that deficit was with a large number of countries, particularly Far Eastern countries. The trade deficit, as I have indicated, is not only with those countries, however, but pretty much across the board, and those are set out in the charts that I referred to.

Mr. Chairman, before going to the details of my testimony, I would very much like to support your opening comments. I do agree with you that if we could pass a No. 1 fundamental bill today to balance the budget deficit, that would be the greatest thing we

could do to deal with the trade deficit. The borrowings to cover our budget deficit, of course, are now to a substantial extent coming from foreign countries and foreign individuals. That is adding to our current account deficit. In 1984 the interest on our Federal deficit paid to foreigners was $21 billion, and the figure was substantially higher in 1985.

In the course of this year, the United States will become the largest international debtor in the world and will be ahead of Mexico and Brazil for that dubious distinction. It means two things: ultimately a decline in a relative sense in the American standard of living, and in the year 2000 it will be 2 or 3 percentage points lower than it would otherwise have been. We can't turn that around. If we balance the budget today, we could minimize that decline in the standard of living in a relative sense. We could not overcome it.

Second, the importance of the trade deficit in relation to the budget borrowing means that at a certain point, we have to get a trade surplus. The only way we can pay off the intangibles in our current account, including that budget deficit to foreigners, is to get a trade surplus. At this time I am not going to outline what we have to do by product or country, but we do hope to do that in my office and those figures will be quite amazing.

At this time—and this is a bit of an off-the-record comment—the only way I can see doing it is to invent something that hasn't been invented and get $50 billion of trade surplus in that category of goods. I want to indicate that the budget deficit is a key for action.

Second, the budget deficit, by its reduction will help us with respect to the exchange rate problem, but that is also fundamental. We should not be deluded by the progress that has been made so far, although it is dramatic and the Treasury is to be commended for its efforts in this respect. The yen is now 175 to the dollar, the lowest it has been in the postwar period. The mark is at 2.25, still almost 25 percent higher than it was in 1980. The Federal Reserve Index, which is based on 100 for 1973, is still substantially above that figure, almost 30 percentage points.

I don't want to try to indicate what would be equilibrium rates with those currencies. We don't know. I think the progress that has been made in this area is significant. We have to go forward with it. We have to give our manufacturers some assurance that when they plan new production in the United States, they can make realistic exchange rate assumptions which will hold for the period for which they are planning competitive production.

We very much support the idea that is in the minds of the committee to have a section in this bill calling for exchange rate negotiations. NAM, in a resolution that I will refer to in a moment, its board of directors has endorsed the GATT negotiations but has specified that there be parallel negotiations to reform the international exchange rate system.

I would leave for any questions what my thoughts might be as to how to do that, but it is quite essential that we continue the G5 process, which has done very well for us, both macropolicies and the exchange rate, but that progress has to be consolidated and we have to go further.

Finally, I would indicate the importance of tax policy and the relationship of tax policy on business and the cost to capital formation. Those fundamentals have to be addressed and worked through in a very thoroughgoing and continuous fashion.

We appreciate the detail that has already been provided to us on the staff draft of the proposed changes in trade policy. NAM is not prepared to comment with respect to all aspects of those items, although we would hope to do so more fully as we have the completed draft language of the text.

I would like to comment at this point on the three policy resolutions approved by our board of directors last month, one with respect to reform of section 301, second with respect to endorsement of the new GATT round of trade negotiations, and third with respect to the proposed negotiations for a broader free trade area with Canada.

First with respect to section 301. The NAM proposal is very similar to that being considered by the committee. We feel that increased authority should be given to the trade representative to take action under section 301. We wouldn't exclude the President from having any role, but we would like to see the role of USTR enhanced so that the USTR can take final action in that area if that seems to be the best way to go.

There is no value, as we see it, to continue 301 as such a high level action involving the President that it takes on a high political significance with respect to the countries with whom we are negotiating.

Second, we believe that 301 should be extended in its language to targeting an industrial policy that is synonymous with targeting, and that that be a cause of action under 301. Likewise, we would like to see that the language is made specific, that foreign cartels are a basis for action under 301.

At this time there are over 500 cartels in Japan. Some are called recession cartels. Another group is called export cartels, and another group are called import cartels. I think maybe Japan is at the point it doesn't need any cartels at all, and its Fair Trade Commission might just be the authority with respect to competition.

I think designating cartels as actionable under 301 would be very helpful to us. It might nudge Japan along in the right direction. I would remind you that the Houdaille petition, which so far as been turned down by the administration, although the subject of machine tools is being revisited as a national security investigation, that was a cartel question, and I don't think it has ever been rebutted that a cartel was a principal part of the action of the Japanese Government to enhance the competitiveness of that industry, limiting imports while the industry was modernized and being able to establish a cooperative export situation for machine tools. We call that to your attention.

Second, I would like to mention, Mr. Chairman, that NAM has endorsed the action, the 301 action of the Semiconductor Industry Association to open up the Japanese market further to semiconductors through that action, and we think that the steps by the administration in that area, although not complete as yet, seem to be moving in the right direction.

We enclose for the record a copy of NAM's endorsement to USTR of the Semiconductor Industry Association petition.

With respect to the GATT round, we feel that this is an opportunity to make the GATT a more effective instrument for law and order in international trade. That refers to certain areas that have been part of GATT's jurisdiction for many years, tariffs and certain nontariff barriers and certain activities including Government procurement. We want further progress in those areas, at the same time we call for extension of the GATT writ to foreign industrial policies, certain investment practices that distort trade, intellectual property rights, and the gambit of Government actions which taken as a whole really direct trade performance through subsidies and other means.

We believe that the draft materials supplied by the staff is very definitely on the right track and is quite complete in that respect. We hope the administration will send up its own proposals for its guidelines for the GATT negotiations. We think the committee has pretty well covered that ground.

In our view, in addition to specific authorization by the Congress to the USTR or to the President for the negotiations, we believe that the Congress at the end of the day should approve the new GATT commitments only if they substantially meet U.S. economic interests and the interests of industry in particular.

Third, we believe that the trade negotiations should be undertaken and at the same time there should be parallel negotiations with respect to reform of the international monetary system. The GATT system was set up in contemplation and taking into account a system of fixed exchange rates. We are not advocating fixed exchange rates at this time by gyrations in the exchange rate of 50 to 60 percent in two to three years are not possible in the context of a GATT system of fixed responsibilities for trade.

Finally, although it is not part of the trade bill, Mr. Chairman, we would like to call attention to the proposal for the United States/Canada free trade area. Our board of directors have supported that, again with the proviso that it meets U.S. economic and industrial interests. We feel that agreement has to have a dispute settlement provision and that agreement should also have an exchange rate provision that consultation would take place when either side believes that the trade flows are being distorted by trades.

I think you would be interested to know since the decline in the value of the dollar began last February and accelerated after September 22 and the G–5 meeting, the value of the Canadian dollar has declined more rapidly than that of the United States dollar. On certain calculations, the Canadian dollar was too low even before it began to decline against the American dollar.

I would like to conclude with one word on negotiating strategy. I think we have the possibility of a more rational strategy now than we have ever had before. In the past when we would negotiate in the GATT, that was an excuse or a pretext to tell every American complainant, we will take care of that in negotiations, hold on. I think a better strategy is to try to take care of those problems through use of 301 or bilateral negotiations as we are now doing.

For example, we have underway a 301 negotiation with Korea with respect to international property rights. We propose also to have intellectual property rights in the agreement with Canada. That would be NAM's proposal.

If it is possible to settle that issue with Korea or with Canada, I think it would be possible to settle it with both. We would then have language and experience for incorporation in the GATT round conclusion and we would know that it would work.

I think this dual approach of bilateral negotiations with good results to be incorporated in the GATT negotiations is a far better practice than gathering up all the results for the final day in the GATT negotiations. In the past, my experience in that area has been the final day was the day we lost about half of the things we wanted in exchange for less than half of the things we got.

Mr. Chairman, I conclude my comments at this time. I want to repeat my commendation for the committee for the steps it has taken in international trade law reform. I think if we can get the right things done on trade law this year and turn our attention after the congressional elections to the fundamental issues of competitiveness in industry, we will be on the right track.

Thank you.

[The prepared statement follows:]

Summary of Testimony by:

Lawrence A. Fox
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before the Subcommittee on Trade, House Committee on Ways and Means

The National Association of Manufacturers represents more than 13,00 companies, including many of America's smallest and a significant portion of her largest firms. Collectively, these firms account for 80 percent of U.S. industrial output and 85 percent of industrial employment in the United States. NAM does not release its membership list.

The testimony discusses the following issues:

- o The relative importance of trade law reform among the measures that will be needed to revers the decline in U.S. competitiveness.
- o The relationship between U.S. manufacturing and U.S. trade generally.
- o The importance of improving the current exchange rate system.
- o The need for a new round of multilateral, GATT negotiations and for legislation authorizing U.S. participation in those negotiations.
- o The value of bilateral trade negotiations with Canada.
- o The need to improve Section 301 of the Trade Act of 1974.
- o The need to enhance U.S. export promotion with particular reference to EximBank on the Foreign Corrupt Practices Act, FCPA.
- o A discussion and suggestion vis-a-vis trade in services.
- o The need for better U.S. access to Japanese technical literature.

NAM
March 20, 1986

TESTIMONY OF

LAWRENCE A. FOX
VICE PRESIDENT, INTERNATIONAL ECONOMIC AFFAIRS
NATIONAL ASSOCIATION OF MANUFACTURERS

ON

TRADE REFORM LEGISLATION

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON TRADE
OF THE
COMMITTEE ON WAYS AND MEANS

MARCH 20, 1986

Mr. Chairman, Members of the Committee, I am Lawrence A. Fox, Vice President for International Economic Affairs of the National Association of Manufacturers. NAM is the nation's oldest national trade association, and our more than 13,000 members include some of the smallest and some of the largest corporations in America. Together they account for approximately 80 percent of U.S. industrial output and more than 85 percent of industrial employment in the United States.

There is a crisis in American trade and at its core is a crisis in U.S. industrial competitiveness. For that reason, Mr. Chairman, NAM and its members are extremely pleased that this important Committee has decided to devote its talent, energy, and

power to the questions of U.S. trade policy and U.S. competitiveness, and we are grateful for the opportunity to appear before you today.

It is important to understand, however, that we are dealing with a series of fundamental problems, not a brushfire that can be taken care of with one piece of legislation or a quick executive decision. Whatever we do in modernizing American trade law, and there are things we should do, it will count for little if we do not give the fundamentals of economic competitiveness the top priority.

The federal budget deficit cripples us in many ways. It drives up the cost of capital for American firms, and it has been one of the principal causes of the overvaluation of the dollar. If it is not reduced, we can expect few positive results from reforms in the trade laws.

Reducing the budget deficit alone, however, will not assure us a rationale exchange rate system. The process of actively pursuing an exchange rate system that works for America as well as its trading partners has begun. It cannot be allowed to falter.

Where the tax policies of our trading partners tend to enhance the international competitiveness of their products, U.S. tax policy is dangerously blind to America's need to compete internationally. That must be remedied.

These are the kinds of considerations that everyone involved needs to bear in mind as we take on in earnest the project of modernizing U.S. trade law. A further consideration is that the effort to improve the trade laws is not without risk. The argument

here is not this Committee or the Congress should moderate its drive to fashion a better U.S. trade policy; it is rather that no change should be made without careful consideration. The great strength of the Congress is its ability to take into account the broad array of interests that are affected by statutory changes in economic policy and that collectively add up to the national interest of our country. In this connection, we very much appreciate the effort that this committee has made to provide the private sector with a discussion draft of the Ways and Means Committee's emerging bill. We hope that our testimony and that of other witnesses will help the Committee refine its thinking about this legislation. We would urge you, however, to hold another set of hearings once the Committee has settled upon legislative language. In our view, firms, trade associations, and private citizens give their best advice to the Congress against the background of clear proposals.

The National Association of Manufacturers believes that the United States is going to have to make a great many difficult decisions over the course of the next few years, some of them quite soon. Many of these are foreshadowed in the bill this committee is now working on. It would be an understatement simply to observe that on many of these issues the members of the NAM have not reached a consensus. For that reason, Mr. Chairman, I think the best way for me to use my time with you this morning is to give you a brief description of NAM's view of the crisis in competitiveness and some of the steps we believe should be taken soon to address it.

MANUFACTURING AND TRADE

A brief statement on the U.S. trade deficit is included as an attachment to my statement, as well as four charts. What is shown most clearly is that when we talk about trade and the trade deficit, we are really talking about manufacturing. In 1985, manufactured goods made up 68 percent of U.S. exports and 71 percent of U.S. imports. And the trade deficit in manufactures, $114 billion, was equal to 76 percent of the total $149 billion deficit.

Looking at the figures another way, 1985's trade deficit of $149 billion was a substantial increase from 1984's record deficit of $123 billion. And all of the deterioration was in manufactured goods. Imports of manufactures rose by 12 percent in 1985 while U.S. manufactured exports rose by only 2 percent. This dismal performance for U.S. manufactured goods in 1985, trade which was in surplus in 1981, must be set against Japan's expected 1985 surplus in manufactures of $129 billion and Germany's of $65 billion.

It is important to recognize that the manufacturing deficit is not simply a reflection of increased imports of the products of traditional industries from one or two areas. Erosion of U.S. competitiveness can be seen in virtually every industrial sector and in America's trade with almost every area of the world. The 1985 trade deficit included a $16 billion deficit in computer equipment and electronic components as well as deficits with Canada, Japan, the European Community, the ASEAN countries of Asia and most of Latin America.

NAM: ANALYSIS AND ACTION

Exchange Rates. As you know, Mr. Chairman, NAM and its members have been the first and foremost in the view that it was the misalignment in the exchange rates that linked the dollar to the world's other key currency that has been driving the trade deficit. This view is one now clearly shared by the Administration and many, if not most, Members of Congress. And the result has been progress.

NAM was very much encouraged by last September's G-5 meeting in New York. For the finance ministers of the United States, Japan, the United Kingdom, France, and Germany to agree, as they did, to work together to raise the values of the world's other leading currencies against the dollar was an historic first step toward a long overdue overhaul of the floating exchange rate system.

We have been even more encouraged, however, by the clear impact that this meeting and the actions that flowed from it have had on the exchange rate markets. A statement on this is attached. It is now clear that the markets do pay attention to what governments do and say--some to what they say and a lot to what they do. And there is a great deal more we need to learn from the G-5 exercise. We need to get a better fix on what actually works in keeping exchange rates in line with economic fundamentals; what is cost-effective; and what will give us the kinds of benefits the trade system needs from the exchange rate system.

Our goal should be a system of exchange rates that assures competitive producers in the United States that their ability to sell on price anywhere in the world will not be denied by trade

distorting exchange rates. In more general terms, U.S. companies need to be able to plan investments in this country with the knowledge that their exchange rate assumptions are realistic.

At present we face something of a dilemma on exchange rate policy. The progress that has been made came about in no small measure because of the work done here in the Congress to make the exchange rate problem part of the national agenda. The policy gains made so far will be of maximum value only if they are vigorously pursued. In this connection we very much welcomed the President's statement in the State of the Union Message that the Secretary of the Treasury should explore the possibility of a new monetary conference. NAM's Board of Directors has called for negotiations on the exchange rate system, as I shall explain in a moment. Careful preparations are required if such talks are to succeed.

In this discussion of exchange rate policy, Mr. Chairman, I think it is important to consider as well the spectre of a precipitous decline in the dollar, the so-called hard landing. The possibility is one that is not to be entirely discounted, and the logic of concern about that happening leads to the same conclusion one reaches in wrestling with the consequences of an overvalued dollar: Somehow we need to inject more stability into the system. Still, it is important to be clear. The problem we face now has more to do with ensuring that U.S. business does in fact reap the competitive benefits that should be associated with a lower, more realistic value for the dollar than it does with the danger of a dollar falling too quickly and too far.

NEGOTIATING POLICY

On one point the NAM, the Admininstration, and most of those with major trade proposals agree. The United States does need to work toward the improvements in the General Agreement on Tariffs and Trade (GATT), but that cannot be the whole of our negotiating strategy, much less of our country's trade policy. As Ambassador Yeutter said not long ago before this subcommittee, "The U.S. will not be held hostage to the multilateral negotiating process. That process is but one way for the United States and other nations to achieve the crucial goal of increased economic growth through expanded world trade."

That philosophy is implicit in the three resolutions adopted last month by the NAM Board of Directors. The NAM Directors have endorsed the idea of a new round of GATT negotiations; they have endorsed the idea that we should negotiate with Canada on the subject of a possible free trade area between our two countries; and they have called for improvements in the U.S. unfair trade statute that is most closely associated with negotiating: Section 301 of the Trade Act of 1974. The NAM Resolution on each of these issues is attached. If the resolutions on the GATT and on U.S.-Canadian trade express our hope that it is possible to improve the international trading rules and to expand markets, the 301 resolution expresses our conviction that the U.S. government must be prepared to take whatever steps may be necessary to protect American trading interests.

The New GATT Round. The NAM approaches the new GATT round in the belief that an open international trading system is very much in the interest of U.S. industry. But we have also reached the conclusion that the GATT's effectiveness has been seriously eroded. Not only has its ability to enforce exiting rules been called into question, but the scope of significant commercial activity not covered by the GATT has grown dramatically.

Our position on a new round is characterized by three considerations I think should be mentioned here:

i) We believe that the Administration should seek specific negotiating authority from Congress at the earliest practical moment.

ii) We believe that, at the end of the day, Congress should approve a new GATT agreement only if it advances the economic interests of U.S. industry. And,

iii) We believe that parallel negotiations to reform the exchange rate system should be given equal priority with the new GATT round.

U.S.-Canada Trade. There are some differences in our approach to the question of U.S. trade with Canada because of the differences in the trading relationship itself. Canada is our largest trading partner, our largest investment partner, and the foreign country whose economy is most closely interwoven with our own. That does not mean, however, that we are willing to accept any deal. It means only that it is particularly easy to see how a deal might be advantageous. The NAM resolution on Canada includes these qualifications:

i) Congress should approve an agreement only if it advances the economic interests of U.S. industry.

ii) The resolution of current disputes should be given high priority and not held hostage to a larger agreement.

iii) There should be an agreed consultation procedure so that trade distortions arising from exchange rate misalignments can be resolved.

Section 301. President Reagan's decision last September to break with the past and to initiate an investigation under this statute, without waiting for someone to file a case, was a welcome demonstration of leadership and the right step in the evolution of U.S. trade policy. The tools for dealing with unfair trade practices by foreign governments provided for by Section 301 have been ignored too long or, at the least, used too narrowly. On the other hand, the difficulties that successive administrations have had in using these powers have not been removed. It is time they were.

Because this is both an important area and one that is the subject of several bills in Congress today, some explanation of our views about its virtues and its shortcomings is in order. The sanctions the law gives to the President to help him get at foreign unfair trading practices are impressive. In trade terms, there is little he cannot do. The difficulty has been twofold: a reluctance to act where the legislative authority is not crystal clear and a concern about the potential costs of U.S. sanctions, in foreign policy terms as well as in trade terms.

NAM recommendations for improving Section 301 address both of these problems. Our Board of Directors has recommended that the law be amended to make it clear that foreign industrial targeting

practices can be reached through Section 301. The present Administration has argued in the past that they can, but the issue is too important to be left to an interpretation open to challenge. It should be made part of the law. Similarly, Congress should put back in to Section 301 specific language on cartels. American producers need the assurance that competition policy abroad that is not in keeping with the successful operation of open world markets can be a basis for action under Section 301. U.S. industry also needs the assurance of law that Section 301 cases will be resolved within a reasonable period of time.

NAM's other major recommendation for improving Section 301 is that greater responsibility be given to the U.S. Trade Representative in 301 cases. The resolution states:

> As it reads now, all of the major decisions involving the use of Section 301 must be made by the President. Because of the enormous importance that attaches to all the decisions the President makes, the result of this arrangement has been to elevate unnecessarily the foreign policy costs to the United States associated with action under Section 301. Giving the U.S. Trade Representative greater responsibility under Section 301 should make this provision of law a more flexible instrument of policy, one that is useful in small matters as well as large.

Indeed, the statute may be especially valuable in small cases, and there are limits to the number of times the trade negotiator can ask the President to involve himself in relatively unimportant cases.

While NAM believes that 301 would be more effective if the USTR had more authority to use it, we do not believe it makes sense to create a legal situation in which the Trade Representative

functions in a manner other than as the deputy of the President. His power, authority, and effectiveness flow from the fact that he is the representative of the President, and it would be a mistake to dilute that. NAM would, therefore, oppose legislation that encouraged the USTR to make public decisions with which the President might have to disagree. Such an arrangement would be counterproductive. At best it would diminish the international standing of the USTR; at worst it would make his officials the adversaries of 301 petitioners, as they would have a stake in avoiding a conflict between the USTR and the President.

Having raised the issue of Section 301 and targeting, I would like to inform this committee that the NAM strongly supports the petition filed last June by the Semiconductor Industry Association. In February, we submitted comments to the U.S. Trade Representative's office urging the Administration to make a formal determination on the merits of that case as soon as possible. A set of these comments is attached.

OTHER ISSUES

As I indicated earlier, we are not in a position today to comment on all of the issues likely to be addressed in the Ways and Means bill, all of which are important. Our purpose, rather, has been to lay before this Committee some of NAM's principal concerns and our views on how these should be addressed. There are, however, some additional issues on which I would like to comment.

Eximbank. None of these is more important than the question of support for U.S. exports, as expressed, or not expressed, by the Administration's and Congress's proposals for the Export-Import Bank.

Ten years ago, the United States supported about 15 percent of its manufacturing exports with some sort of official financing. Stephen DuBrul, the conservative chairman of Exim at that time, said, "There is a significant share of exports--equal to about 16 percent of non-agricultural exports--that do require some form of Eximbank assistance to share risks or to overcome limitations in the private market."

Today, U.S. official financing support levels are down to around 7 percent for manufacturing exports, compared to 25-40 percent found in France, Britain and Japan. Since the basic composition of U.S. export trade has not changed, the question arises: Is the United States now throwing about 10 percent of its manufacturing export potential out the window? If we are, that's $15 billion of the trade deficit.

If the United States wishes to achieve international competitiveness, it is going to have to pay the price and that means making hard decisions in the budget battles in favor of maintaining a strong Eximbank. In many respects, Eximbank is a barometer of our government's commitment to trade competitiveness. Right now the barometer is falling, and that means rough weather ahead for U.S. exporters.

FCPA. The Foreign Corrupt Practices Act should be amended so that it is not the disincentive to American exporters that it is

today. At this juncture, we think the right approach is that which is embodied in the "Business Accounting and Foreign Trade Simplification Act," (S. 430) offered by Senator Heinz. This maintains the thrust of legislation without putting an unreasonable burden on U.S. exporters and without discriminating among markets.

Services. When we talk about services we are not talking about a substitute for manufacturing. American needs manufacturing. The myth that as a country we can relax and enjoy the benefits of the shift from manufacturing to a service oriented economy is only a myth. The fact is that this shift, in so far as it has occurred, is not entirely beneficial. General comparisons are difficult but on average American manufacturing jobs are about twice as productive as service jobs. In 1983 for example, output per hour in manufacturing was around $21 while in services it was near to $11. As a nation our standard of living is directly related to productivity. So we have to ask ourselves, does it make sense to give up highly productive manufacturing jobs for less productive service jobs?

Another consideration is that the service economy--whether it be transportation, insurance or banking--revolves around the goods producing sector like the entourage of assistants around a tennis star. However valuable coaches, press experts and the like may be in their own right, they are unimaginable without the player. Similarly, it is unimaginable that the United States will be able to retain a position as the leading international provider of high value added services if we are not also an internationally competitive producer of high value added manufactured goods.

Nevertheless, the critical role of services in our balance of payments cannot be ignored, especially in view of the growing interrelationship between our services and manufacturing exports. In light of these facts and of the important place that trade in services will occupy in future trade negotiations, it might be helpful to develop statistical, analytical tools for services (SIC codes) similar to those that now exist for merchandise.

NAM strongly endorses the Administration's effort to provide fair and reliable international rules governing trade in services, but we believe this has to be seen as an adjunct for a better GATT for goods, not a substitute for GATT's failures in the goods area.

Japanese Translation. NAM supports "The Japanese Technical Literature Act," (S. 1073/H.R. 3831) offered in the Senate by Sen. Max Baucus of Montana, and in the House by Rep. Norman Mineta of California. Japan is our principal economic competitor, the Japanese language is among the most inaccessible to Americans, and the technological breakthroughs we are seeing in Japan are among the most critical to the advancement of science and technology in several fields important to the U.S. economy. A copy of my letter to Senator Baucus expressing support for the "Japanese Technical Literature Act" (S. 1073) is attached.

CONCLUSION

Mr. Chairman, the Congress now has before it several major legislative proposals on international trade. They include the bill that this Committee is so actively working on; there is the

"Trade Law Modernization Act," (H.R. 3777), offered by the Chairman and Ranking Minority Member of the Committee on Energy and Commerce, there is the Senate's bipartisan "Trade Enforcement Act," (S. 1860), and there is the "Competitive America Trade Reform Act of 1986," (H.R. 4226/S. 2127), introduced last month by Representative Fazio and Senator Hart.

There are important differences among these bills to be sure. Together, however, they represent a very positive development, namely an appreciation by the Congress that trade must be given a higher priority in American national life and that our trade policy must be guided by two fundamental ideas. The first is the need to enhance the economic well-being of the United States. The second is the realization that the United States can only truly prosper in the context of an open international trading system.

Thank you.

NAM

NAM International Economic Affairs Dept.
February 21, 1986

ANALYSIS OF U.S. TRADE PERFORMANCE

U.S. Trade Balances: The deterioration in manufactured goods trade performance has been the primary cause of the worsening of the trade deficit by over $100 billion since 1981. From a small surplus in 1981, manufactures have swung into deficit by $113 billion - a net shift of $118 billion. Imports have increased by over $100 billion during this period (73 percent), while exports remain lower than in 1981 despite two years of world growth recovery. Thus the overall trade deficit has worsened to nearly $150 billion, from just over $40 billion in 1981. This has occurred despite a $28 billion gain from lower oil prices; the net decline in the U.S. agricultural surplus has contributed only $17 billion to the overall deterioration, a small amount by comparison with manufactures.

U.S.-Japan-Germany Manufactures Balances. The U.S. manufactures trade deficit of $149 billion in 1985 compares with a projected Japanese surplus of $129 billion and a projected German surplus of $65 billion. Total manufactures exports of $145 billion for 1985 left the U.S. far behind the projected Japanese total of $166 billion and the German total of $157 billion. This belies the argument that although the U.S. has a large deficit in manufactued goods, we are still the world's largest exporter of such goods, or that our defict is purely a function of faster growth in the U.S. and slower growth abroad.

Sectoral Trade Balances. Since 1981, the decline in U.S. manufactures trade performance has been distributed in roughly equal shares between capital goods, automotive products and non-automotive consumer goods. In 1981 a $46 billion capital goods surplus more than covered deficits in autos and consumer goods. This surplus in America's strongest trade category has shrunk to $9 billion in 1985, while the automotive deficit was $44 billion and the deficit in other consumer goods was $55 billion. If we look at high technology goods alone, as classified by a Commerce Department definition, we find that our surplus in this "sunrise" sector of the economy fell from $27 billion in 1981 to only $5 billion last year. And even this small surplus was mainly due to strong export performance in just one category - aircraft.

Regional Trade Balances. The U.S. trade balance has seriously worsened with virtually every major trading partner or regional group of partners - except, of course, the OPEC nations. With the European Community and Japan, our balance has worsened by over $30 billion in each case since 1981. In the case of Japan, this is due to a near doubling of imports, while U.S. exports grew by less than 4 percent in 5 years. Our already lopsided deficit grew

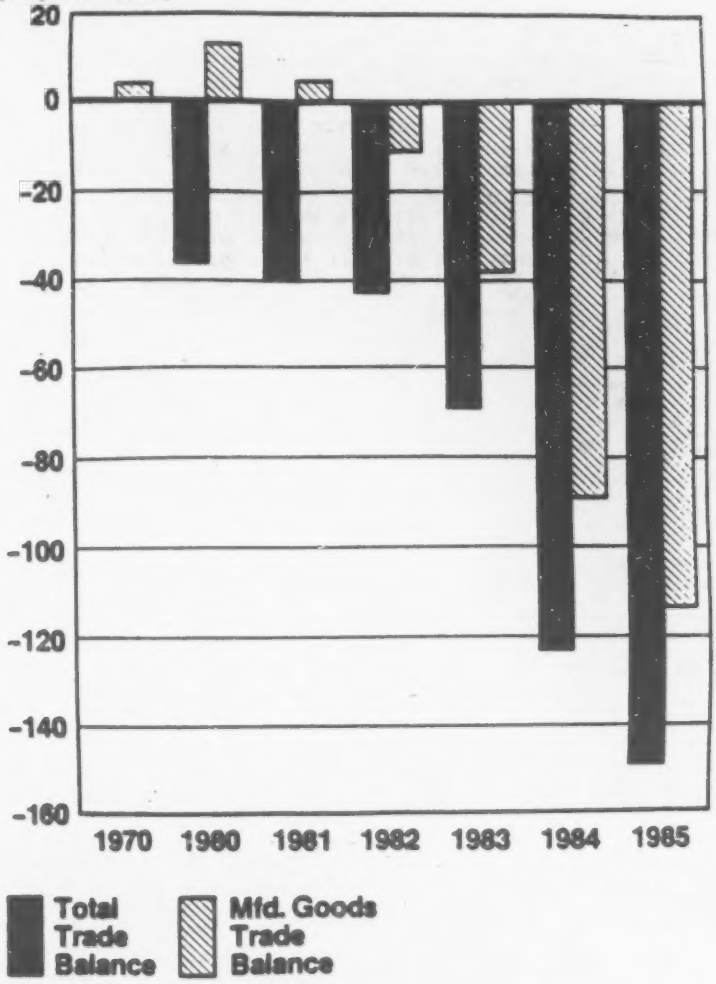
to almost $50 billion last year. In the case of the EC, our $9 billion surplus of 1981 has become a $22 billion deficit. Our exports have actually fallen by over $6 billion, while our imports grew by $25 billion or over 50 percent. We have also seen a growth of nearly $20 billion in our deficit with the East Asian nations. Once again, exports have stagnated, while our imports nearly doubled, leaving an overall U.S. deficit of $28 billion. In the case of Canada, we have seen a substantial growth in our exports, though much of this is due to increased shipments of automotive parts for final assembly and re-shipment to the United States. Even so, while U.S. exports increased by $8 billion, imports were up by nearly $23 billion, leaving a net U.S. deficit of $22 billion - $15 billion worse than in 1981. In the case of Mexico and the other Latin American nations, we did not see a substantial worsening of our regional trade deficit in 1985 over 1984. However, due to the relative depression of these markets since the debt crisis began, our overall trade position has worsened by about $20 billion in the region as a whole.

CHART 1

Annual U.S. Trade Balances

Total Trade & Manufactured Goods

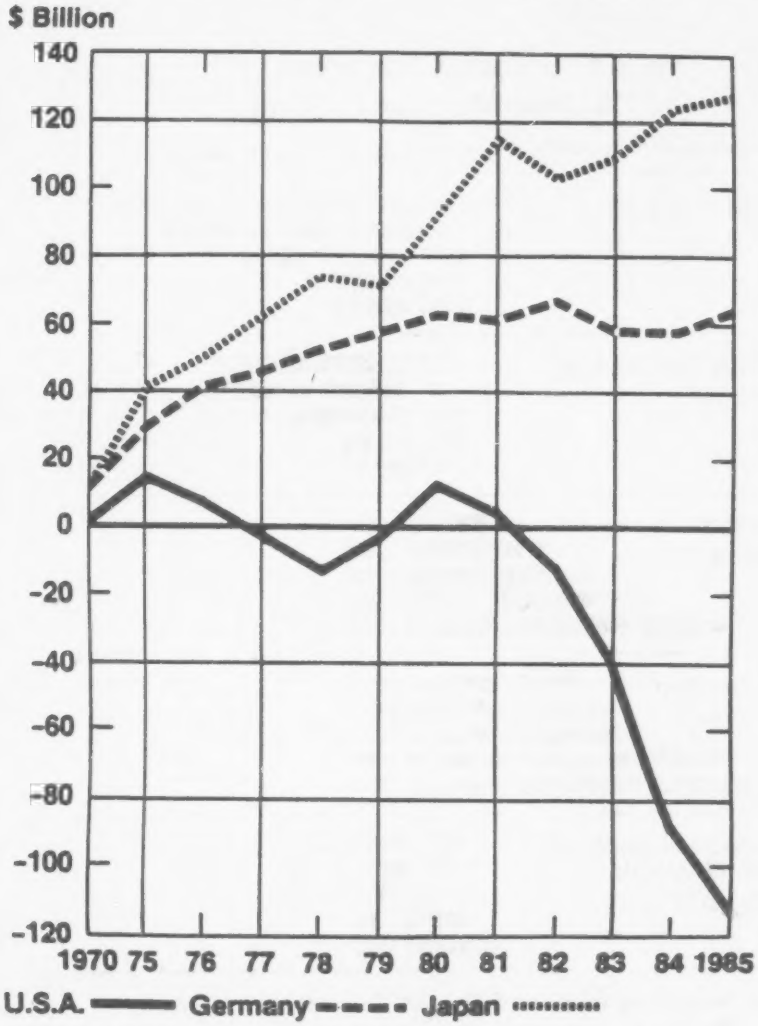
All Figures in $ Billions.
(Imports c.i.f.)



Source: NAM, From U.S. Commerce Department Data.

CHART 2

Trade Balances in Manufactured Goods

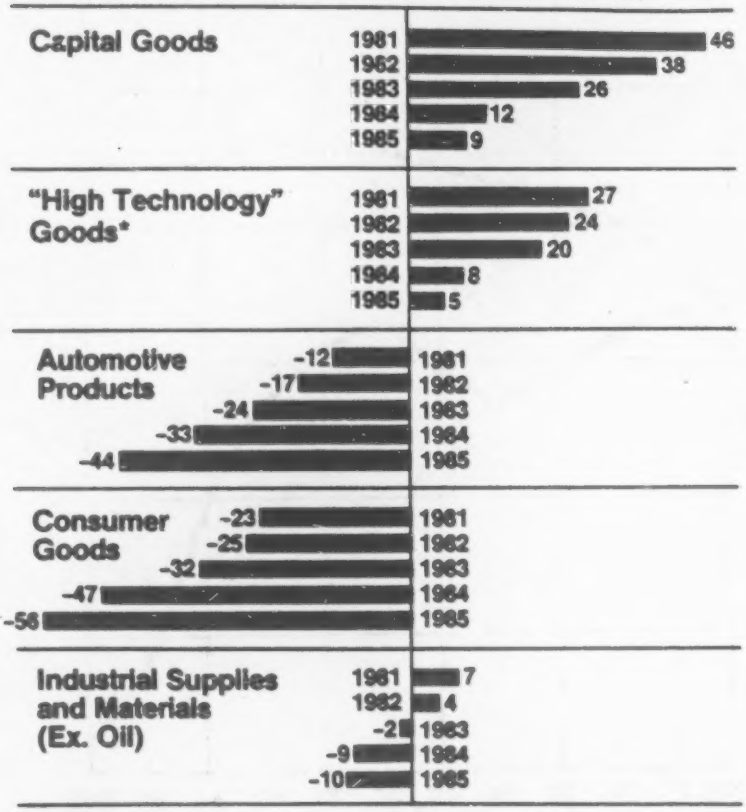


Japan and Germany: January-October 1985 at annual rate.

CHART 3

Major Sectoral Balances in U.S. Manufactures Trade

(All Figures in $U.S. Billions-Imports f.a.s. or customs value)



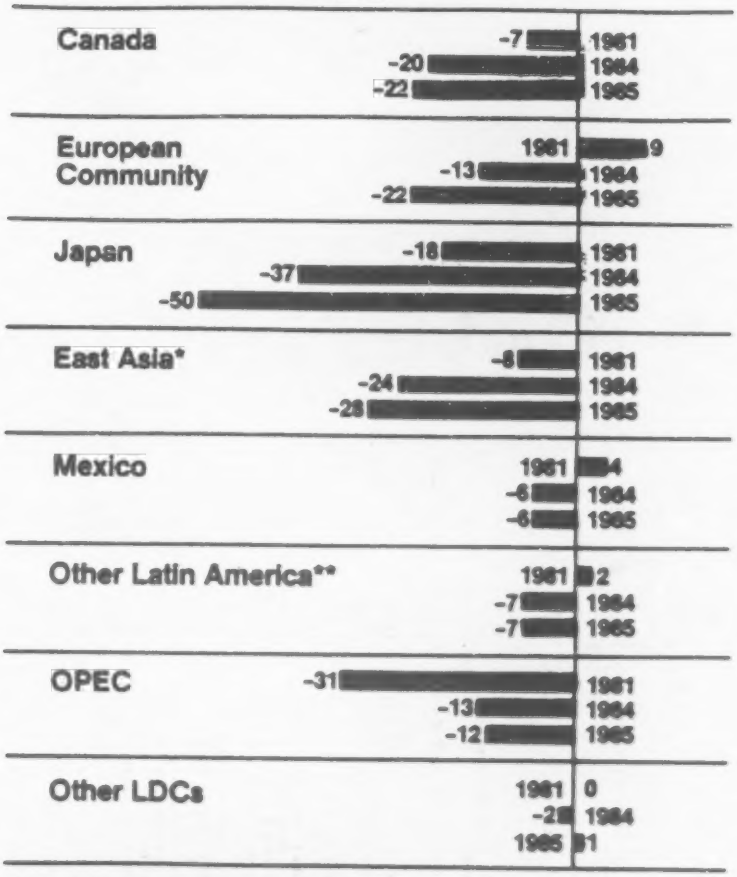
*High technology goods as defined by Commerce Department, definition no. 3.

Source: NAM, from Commerce Department statistics.

CHART 4

U.S. Trade Balances With Major Trading Partners

All Figures in $U.S. Billions-Imports c.i.f.



*Excluding Indonesia, which is counted with OPEC.
**Excluding Venezuela and Ecuador, which are counted with OPEC.
Source: NAM, from Commerce Department statistics

TABLE A

U.S. MANUFACTURES TRADE - MAJOR PRODUCT CATEGORIES, 1981-1985

	U.S. EXPORTS			U.S. IMPORTS			BALANCE		
	1985 ($bil)	CHANGE fr '84 (%)	CHANGE fr '81 (%)	1985 ($BIL)	CHANGE fr '84 (%)	CHANGE fr '81 (%)	1985 ($bil)	CHANGE fr '84 ($bil)	CHANGE fr '81 ($bil)
TOTAL TRADE - Imports c.i.f.	213.1	-2	-9	361.6	6	32	-148.5	-25.2	-108.8
Agricultural Products	29.6	-22	-32	22.0	2	18	7.6	-8.6	-17.1
Manufactured Goods	145.4	2	-8	258.2	11	73	-112.8	-24.0	-118.0
Petroleum Products	4.7	4	27	51.5	-12	-34	-46.8	6.9	28.0
TOTAL TRADE - Imports Customs Value	213.1	-2	-9	345.3	6	32	-132.2	-24.3	-104.6
Agricultural Products	29.6	-22	-32	20.0	1	18	9.6	-8.4	-16.7
Manufactured Goods	145.4	2	-8	246.8	11	73	-101.4	-23.0	-113.1
Petroleum Products	4.7	4	27	49.6	-11	-34	-44.9	6.5	27.0
BY "END-USE" DEFINITION - Imports Customs Value									
Capital Goods	73.9	3	-8	65.1	9	89	8.8	-3.4	-36.9
Automotive Products	22.9	11	27	66.8	25	125	-43.9	-11.0	-32.2
Consumer Goods	12.8	-5	-20	68.3	14	76	-55.7	-9.0	-32.8
Industrial Supplies & Materials (Excluding Petroleum)	83.5	-8	-16	63.1	-5	10	-9.6	-0.2	-16.0
MANUFACTURED GOODS BY MAJOR SITC CATEGORIES - Imports Customs Value									
Chemicals (SITC 5)	21.8	-3	3	14.5	6	54	7.3	-1.4	-4.5
Basic Manufactures (6)	14.0	-7	-32	46.6	1	25	-32.5	-1.5	-15.8
--Paper	2.3	-12	-23	6.0	7	54	-3.7	-0.7	-2.8
--Textiles	2.4	0	-33	4.9	9	63	-2.5	-0.4	-3.6
--Iron & Steel	1.2	-8	-59	10.3	-8	-8	-9.1	0.5	-0.8
--Non-Ferrous Metals	1.5	-8	-25	7.0	-15	0	-5.5	1.1	-0.5
Machinery & Transport Equipment (7)	94.3	5	-1	137.3	15	97	-43.0	-13.8	-69.1
--Office Machines & Computers	14.9	2	52	11.6	7	222	3.3	-0.5	-2.9
--Electrical Machinery & Parts	12.5	-9	9	17.7	-3	92	-5.2	-0.7	-7.5
--Power Generating Machinery (including Engines)	9.3	2	-2	8.8	21	91	0.5	-1.3	-4.4
--Non-Consumer Telecommunications Equip.	4.2	8	8	9.5	12	106	-5.3	-0.7	-4.6
--Construction & Special Purpose Machinery	8.4	5	-24	8.2	11	63	2.2	-0.2	-5.1
--General Industrial Machinery & Parts	7.4	-6	-36	8.1	17	65	-0.7	-1.7	-7.3
--Machine Tools & Metalworking Machy.	1.2	0	-45	2.8	40	40	-1.6	-0.8	-1.8
--Agricultural Machinery & Tractors	1.6	-6	-54	1.4	-7	8	0.2	0.0	-2.0
Automotive & Transport Equipment									
--Cars	6.0	22	54	36.5	25	109	-30.5	-6.2	-16.9
--Automotive Parts	9.4	135	527	10.3	17	151	-0.9	3.9	0.0
--Aircraft & Parts	14.4	32	2	3.6	20	38	10.8	2.9	-1.3
Miscellaneous Manufactures (8)	15.3	-3	-8	48.5	14	85	-33.2	-6.4	-23.7
--Professional, Scientific, & Controlling Instruments	6.5	5	8	3.2	19	88	3.2	-0.2	-1.1
--Clothing	0.8	0	-33	14.9	10	99	-14.1	-1.4	-7.0
--Toys, Games & Sporting Goods	0.6	-14	-45	4.1	24	86	-3.5	-0.9	-2.1

SOURCE: NAM, from Statistics in Commerce Department, HIGHLIGHTS OF U.S. EXPORT AND IMPORT TRADE

TABLE B

U.S. TRADE WITH MAJOR REGIONAL TRADING PARTNERS, 1981-85

REGION OR COUNTRY	U.S. EXPORTS				U.S. IMPORTS (C.I.F. BASIS)				BALANCE			
	1981	1984	1985	Chg. 1981-85	1981	1984	1985	Chg. 1981-85	1981	1984	1985	Chg. 1981-85
CANADA	39.6	46.5	47.3	7.7	46.8	66.9	69.4	22.6	-7.2	-20.4	-22.1	-14.9
EUROPEAN COMMUNITY	52.4	47.0	45.8	-6.6	43.7	60.3	68.2	24.5	8.7	-13.3	-22.4	-31.1
JAPAN	21.8	23.6	22.6	0.8	39.9	60.4	72.4	20.5	-18.1	-36.8	-49.8	-31.7
EAST ASIA*	19.6	22.5	20.7	0.8	28.0	46.4	48.6	20.6	-8.4	-23.9	-27.9	-19.5
MEXICO	17.8	12.0	13.6	-4.2	14.0	18.3	19.4	5.4	3.8	-6.3	-5.8	-9.6
OTHER LAT. AMERICA**	14.9	10.3	10.2	-4.7	12.6	17.4	17.3	4.7	2.3	-7.1	-7.1	-9.4
OPEC	20.7	14.7	12.5	-8.2	51.8	28.1	24.1	-27.7	-31.1	-13.4	-11.6	19.5
OTHER LDCs	16.0	14.9	14.7	-1.3	16.0	16.7	13.7	-2.3	0.0	-1.8	1.0	1.0
TOTAL TRADE	233.7	217.9	213.1	-20.6	273.4	341.2	361.6	88.2	-39.7	-123.3	-148.5	-108.8

*Excluding Indonesia - Counted with OPEC

**Excluding Venezuela and Ecuador - Counted with OPEC

All figures in billions of dollars.

Source: NAM, from statistics in Commerce Department, Highlights of U.S. Export & Import Trade

NAM International Economic Affairs Dept.
March 19, 1986

NOTE ON RECENT EXCHANGE RATE DEVELOPMENTS

The table below summarizes dollar exchange rate changes as of March 18. The Federal Reserve's index of the dollar's value against the other 10 industrial nation currencies stood at 114.4. This represents a fall of 8% since the mid-January G-5 meeting and 18% since G-5 intervention began in September. The dollar is now 28 percent lower than its February 1985 peak, but remains 31% higher on a trade-weighted basis than its 1980 average value.

Japanese yen: The dollar has fallen 13% since London G-5 meeting, 27% since September, and 33% since the February peak. While the dollar is now about 23% lower than in 1980 on a nominal basis, it is still higher on a competitive "real" exchange rate basis.

Deutsche mark: The dollar has fallen by 9% in the last month, 21% since September and 32% in the last year -- but is still 24% higher than in 1980.

Canadian dollar: Canadian government intervention announced on Feb. 6 has reversed the rise of the $US against the $Cdn. over the past year. However, the $US remains 3% higher than a year ago and 20% higher than in 1980.

CHANGE IN VALUE OF U.S. DOLLAR, 1984-1986

(Measured against currencies of F.R. Germany, Japan, Canada and Federal Reserve G-10 Index)

	DM	Chg. to date (%)	Yen	Chg. to date (%)	$US/$C	Chg. to date (%)	FED Index	Chg. to date (%)
Mar. 18, 1986	2.25	--	175	--	$0.72	--	114.4	--
Jan. 17, 1986	2.46	- 9	202	-13	0.71	- 1	124.6	- 8
Sept. 20, 1985	2.85	-21	240	-27	0.73	2	139.8	-18
Feb. 1985 Avg.	3.29	-32	260	-33	0.74	3	158.4	-28
1984 Avg.	2.84	-21	237	-26	0.77	7	138.2	-17
1980 Avg.	1.82	24	227	-23	0.86	20	87.4	31

(Federal Reserve Board 10-Country Index: March, 1973 = 100.)

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ADOPTED BY NAM BOARD OF DIRECTORS
FEBRUARY 7, 1986

NAM RESOLUTION ON A NEW GATT ROUND

The National Association of Manufacturers believes that the interests of U.S. manufacturers are best served by an open international trading system that is founded upon agreed rules of commerce. The events of the last several years, however, have revealed a growing lack of confidence in the ability of the General Agreement on Tariffs and Trade (GATT) to enforce existing rules and to provide discipline over governmental activities affecting trade that are not now covered by GATT rules.

NAM recognizes that the GATT has served the interests of all of the contracting parties. Because of its shortcomings, however, domestic support for the GATT in the United States can continue only if we can achieve with our trading partners a body of international commercial law that is commensurate with the needs of the trading system. This will mean, among other things, a broadening of the coverage of the GATT import safeguard mechanism so that it includes trade restricting actions carried out by private organizations in contracting-party states as well as those carried out by governments. (A well known example of these private activities is the agreement between the Society of Motor Manufacturers and Traders in the United Kingdom and the Japanese Automobile Manufacturers Association, the effect of which is to restrict Japanese automobile exports to the United Kingdom.) A few of the several other improvements in the GATT that NAM would expect to see as the result of a new MTN round include the establishment of a more effective dispute settlement mechanism; the development of new understandings on industrial policies and investment policies with implications for international trade; greater protection for intellectual property rights; and the adoption of agreed rules governing trade in services.

Any future MTN round will, of necessity, build upon the work of the Tokyo Round, which was the first to try to establish meaningful discipline over the use of non-tariff barriers to trade (NTBs), such as arbitrary customs valuation systems, trade distorting standards requirements, and subsidies. A review of the effectiveness of the NTB codes agreed upon in the context of the Tokyo Round should be one of the first tasks of the participating nations in the next round.

Because we are hopeful that these objectives are achievable, the NAM endorses the Administration's efforts to inaugurate a new round of multilateral trade negotiations. The NAM could not support, however, the adoption by the U.S. Congress of any agreement that did not advance the economic interests of U.S. industry. When the time comes for an agreement to be submitted to the Congress, the U.S. Trade Representative should include as part of the Administration's explanation of that agreement a clear statement of the agreement's expected economic impact on U.S. interests.

(OVER)

At this juncture, the NAM is concerned that there is still work to be done in developing U.S. negotiating objectives. We urge the Administration to seek specific negotiating authority from the Congress for a new round. This should result in a clearer statement of American goals than is now available, and it should give added weight to positions that U.S. negotiators take in international meetings. NAM would welcome the opportunity to participate in the development of this legislation.

Finally, the events of the last five years have shown clearly that the strongest influences on the trading system are neither tariffs nor the rules of trade but exchange rate relationships. The system for establishing these relationships has not been working properly, and the consequences have been disasterous for much of American industry. NAM believes it is essential that the United States also begin separate negotiations with its major trading partners with the objective of improving the exchange rate system. Parallel negotiations to reform the exchange rate system should be given equal priority with the new GATT round.

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ADOPTED BY NAM BOARD OF DIRECTORS
FEBRUARY 7, 1986

NAM RESOLUTION ON U.S.-CANADA TRADE

The National Association of Manufacturers appreciates that American economic relations with Canada are different in several important respects from our economic relations with other countries. Canada is America's largest foreign customer, our principal foreign supplier, and the recipient of more U.S. investment than any other country. Because it is spread across a continent, U.S.-Canadian trade is as much a series of regional phenomena as it is a relationship between two separate nations.

The very closeness of our economic cooperation has created a situation in which government interference with the markets of the two countries can be a greater cause for concern for both American and Canadian businesses than in other economic relationships.

For these reasons and because of the potential for building on the existing high level of business cooperation between our two countries, the National Association of Manufacturers supports the proposal for U.S.-Canadian bilateral trade negotiations.

Any agreement resulting from these negotiations should advance the economic interests of American industry. The opportunities to do so are numerous. They include tariff reductions, meaningful reductions in Canadian federal and provincial subsidies, reductions in Canadian federal and provincial non-tariff barriers, enhanced protection for intellectual property rights, and agreed limits over the Canadian government's ability to restrict and/or control U.S. investment in Canada. In addition, an effective and expedited disputes settlement procedure should be obtained, as well as an agreed procedure for consultations regarding the exchange rate between the Canadian and U.S. dollar so that trade distortions arising from this cause can be resolved. The NAM believes that success in these areas is likely only if the U.S. Government accords significant weight to the advice it receives from the U.S. private sector in the course of the negotiations. If these goals are not substantially achieved, NAM will not be able to support a new trade agreement with Canada.

Because of the importance of securing an agreement that advances U.S. economic interests, the U.S. Trade Representative should include as part of the Administration's explanation of the agreement a clear statement of the agreement's expected economic impact on U.S. interests when the time comes for an agreement to be submitted to the Congress.

NAM believes that the resolution of existing disputes between the United States and Canada should be given a high priority. The sooner these matters can be cleared from the U.S.-Canadian agenda of commercial issues, the greater the likelihood that a trade enhancement agreement benefical to both countries can be negotiated.

In the hope that such an accord can be achieved, the National Association of Manufacturers urges the Administration and the Congress to move forward toward a new framework for the U.S.-Canadian economic relationship.

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ADOPTED BY NAM BOARD OF DIRECTORS
FEBRUARY 7, 1986

NAM RESOLUTION ON SECTION 301

The National Association of Manufacturers is convinced that U.S. commerce is burdened at home and abroad by the effects of an array of foreign practices and policies that are inconsistent with the goal of an open world trading system. Not all of these practices can be addressed effectively through the General Agreement on Tariffs and Trade and/or the provision of U.S. law that are domestic expressions of GATT agreements (e.g., our antidumping and countervailing duty laws). Virtually all countries have sophisticated and flexible ways of responding to commercial realities outside the GATT system.

It was clearly the intent of Congress to provide the Executive Branch with a powerful and flexible tool for managing America's trading interests when it wrote into law the language of Section 301 et seq. of the Trade Act of 1974. Until recently, however, Section 301 has been largely unused, other than as a formal mechanism for U.S. private parties to draw Government's attention to violations of U.S. GATT rights.

The National Association of Manufacturers applauds the President's willingness to utilize the powers of Section 301 more fully as has been indicated by his ground-breaking announcement of September 7. We are pleased that the Administration has opened on its own initiative several investigations of unfair foreign trade practices. We understand this and other recent actions to mean that the President is prepared to impose the sanctions provided in this statute if he determines that the practices at issue are unreasonable, unjustifiable or discriminatory and that they continue to burden U.S. commerce.

The NAM urges the Administration to choose future cases carefully and to select those that have broad implications for U.S. manufacturing as a whole. Cases involving industrial targeting by major exporting countries are likely to meet this test.

RECOMMENDED CHANGES IN SECTION 301

The powers granted to the President under Section 301 as it stands today appear to be broad enough to enable the Executive Branch to take any action that might be necessary to deal with the kinds of practices that come within the scope of the statute. This does not mean, however, that Section 301 could not be usefully amended. Rather, the history of this law suggests that judicious amendments would make Section 301 a better servant of U.S. trading interests. The NAM supports and encourages the following changes in Section 301 of the Trade Act of 1974:

- Inclusion of Targeting. The Administration has in the past argued that unfair foreign industrial targeting practices can be reached through Section 301. Given the complexity of the issues involved and the lack of international agreement on how governments should deal with foreign targeting and trade, it is appropriate that these practices be addressed under a discretionary statute like Section 301. In view of the threat that targeting poses to the trading system as a whole, it is important that it be explicitly actionable under Section 301.

- Inclusion of Language on Cartels. The precursor to section 301 of the Trade Act of 1974, namely, Section 252 of the Trade Expansion Act of 1962, empowered the President to act, inter alia,

> Whenever a foreign country or instrumentality .....engages in discriminatory or other acts (including the tolerance of international cartels) or policies unjustifiably restricting United States Commerce.

This language does not appear in Section 301 of the 1974 Act, which supercedes the Trade Expansion Act. Notably, it is contained in Section 103 of the Revenue Act of 1971, and it was this statute that formed the basis of the 1982 Houdaille petition against the targeting practices that had resulted in Japan's export strength in certain catagories of machine tools.

The Houdaille case must be regarded as the single most important targeting case yet to come before the Executive Branch, at least of those which have been decided. It clearly established the degree to which the "tolerance of international cartels" can result in injury to U.S. Commerce. Section 301 should be amended to reestablish explicitly the idea that competition policy abroad, when not in keeping with the successful operation of open world markets, can be a basis for action under Section 301.

- Revised Statement of Time Limits. Under current law, cases filed under section 301 have been left essentially unresolved for over a decade while U.S. petitioners awaited the outcome of deliberations in the GATT. Section 301 should be improved in a way that assures U.S. parties of definitive results in a reasonable period of time.

- Greater responsibility for the U.S. Trade Representative. As it reads now, all of the major decisions involving the use of Section 301 must be made by the President. Because of the enormous importance that attaches to all of the decisions the President makes, the result of this arrangement has been to elevate unnecessarily the foreign policy costs to the United States associated with action under Section 301. Giving the U.S. Trade Representative greater responsibility under Section 301 should make this provision of law a more flexible instrument of policy, one that is useful in small matters as well as large.

In exercising the powers provided in Section 301, the Administration should continue to take into account the differences between those cases which involve foreign infringements of international rules and those which do not.

NAM believes that the changes suggested above would make this and succeeding administrations more likely to act under Section 301, where action is called for, than has been the case in the past.

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COMMENTS OF THE

NATIONAL ASSOCIATION OF MANUFACTURERS

ON

THE PETITION OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION

FOR RELIEF UNDER

SECTION 301 OF THE TRADE ACT OF 1974

FEBRUARY 24, 1986

The Administration is currently involved in an investigation of the petition filed on June 14, 1985 by the Semiconductor Industry Association. The industry has asked the Administration to assist it in opening Japan's market for semiconductors and in preventing dumping by Japanese semiconductor producers in the United States. We wish to inform you that the National Association of Manufacturers strongly supports this petition and to urge the Administration to take whatever steps may be necessary to provide the relief requested.

BACKGROUND

It is unusual for the NAM to take positions on sector specific trade matters. We did so in 1982 in support of the petition filed with the U.S. Trade Representative's office by a machine tool builder, Houdaille Industries, because the issue that

was at the heart of that case was, and is, one that concerns American industry generally: namely, foreign industrial targeting. Targeting is better understood today than it was in 1982 by members of the National Association of Manufacturers, Members of Congress, and others. This is no doubt due to the impressive amount of work that has been done on this subject in the last four years and to the alarming increase in the U.S. trade deficit in that period.

We provide as an attachment the 1984 report of NAM's Task Force on Foreign Industrial Policies and U.S. Competitiveness, which, inter alia, expresses our view that in discussing targeting it is appropriate to be guided by the U.S. International Trade Commission's definition of the term as stated in the Commission report Foreign Industrial Targeting And Its Effects on U.S. Industries Phase I: Japan (USITC Publication 1437, October 1983). The ITC identified targeting as "coordinated government actions that direct productive resources to give domestic producers in selected industries a competitive advantage...."

The threat posed by foreign industrial targeting has a special importance for the National Association of Manufacturers. Our more than 13,000 members account for 80 percent of U.S. industrial output and approximately 85 percent of U.S. industrial employment. It is they who are affected when unfair foreign targeting practices injure U.S. industry. It is primarily manufacturing industries whose losses are counted in the 1985 U.S. trade deficit of $149 billion, and manufactured goods are the centerpiece of U.S. trade. In 1985, they made up 68 percent of

U.S. exports and 71 percent of U.S. imports. Further, the deficit in manufactures, $114 billion, was equal to 76 percent of the total trade deficit.

Against this background, our general concern with the problem of foreign industrial targeting is, if anything, greater today that it was in 1982. We do not argue that an answer, even an effective answer, to the challenge of foreign industrial targeting will solve the American trade problem or reverse the trade deficit. We are convinced, however, that achieving these critical goals will depend, among other things, on the U.S. Government's ability to fashion an effective set of responses to foreign industrial targeting.

COMMON THREADS: HOUDAILLE & SIA

In our support for the Houdaille case, we noted that the machine tool industry in both the United States and Japan had an economic importance beyond the dollar value of the sales of that industry "as they are critical to a variety of industries from aircraft to farm machinery." The same point can be made with respect to semiconductors. Semiconductors are the building blocks of modern electronics, and the list of their applications is almost endless. In this connection, it is worth pointing out that the 2 1/2 million people employed in the American electronics industry represent the largest single component of our country's industrial work force.

Secondly, we also observed in our Houdaille comments that the industry in question was a strong one in both countries. This is also the case in semiconductors. On the basis of innovation, efficiency, and market dominance, the U.S. semiconductor industry is clearly the world leader, with 1985 sales of $15 billion, $5 billion of which were earned in export markets. Thus in semiconductors, as in machine tools, we are not comparing the strength of one economy with a weak area of another. We are comparing a strong and critical sector of the U.S. economy with an important and successfully targeted sector of the Japanese economy. Both the Japanese machine tool industry and the Japanese electronics and semiconductor industries have been the beneficiaries of successive special measures laws to promote them.

Thirdly, the SIA petition, like the Houdaille petition before it, is very much about competition policy in Japan, particularly cartels. This is not surprising. As we said in our comments in 1982:

> Cartels provide a means by which the Japanese government can identify and work with an industry. They are at the heart of Japanese industrial policy. ... Clearly collections of firms subject not only to regulation but direction from central authority, whether it be the Government of Japan through its administrative guidance procedure or [the firms'] trade associations, are in essence cartels.

In this case the relevant trade association is the Electronic Industries Association of Japan, which has filed a brief opposing the SIA petition.

ELEMENTS OF UNFAIRNESS

The question of fairness in international trade is extraordinarily difficult, but it cannot be ignored. In this case, it must be asked: Have the successes of the Japanese semiconductor producers in the U.S. market and in the Japanese market been fairly won? We believe that in important respects the answer to that question is, no.

We do not wish to repeat the substantial arguments of the SIA submission, with which the Administration is well familiar. On the other hand, we think it is important that you understand why we believe i) that the Japanese have essentially created and benefited from unfair conditions in the two most important semiconductor markets in the world, the United States and Japan, and ii) that the U.S. Government has an obligation to correct and/or offset these conditions.

Three elements of this unfairness seem to us both irrefutable and persuasive. They relate to i) a pattern of market shares that strongly suggests the presence of unfair trade barriers in Japan; ii) unmistakable evidence of dumping by Japanese semiconductor producers in the U.S. market; and iii) substantial involvement by the Government of Japan in the development of the Japanese semiconductor industry. A brief word about each of these categories of evidence should help illuminate our concern.

Market share. SIA has shown an extraordinary pattern of market shares for U.S. semiconductors. In 1984, for example, U.S. semiconductors held 83 percent of the U.S. market, 55 percent of the European market, and 47 percent of other markets, not counting

the Japanese market. In each of these markets, U.S. semiconductors compete directly with Japanese and European products. Against this background, it is extraordinary to us that U.S. semiconductor firms were able to win only 11 percent of the Japanese market. The Japanese controlled the other 89 percent.

It is also extraordinary that the U.S. share of the Japanese semiconductor market has essentially held constant at roughly 10 percent for more than a decade. A free market for semiconductors in Japan would, we believe, have been characterized by noticeable swings in response to changes in the yen/dollar exchange rate, which have been dramatic; to a series of trade liberalization measures; to the new undertakings by the Government of Japan in the area of Government Procurement (e.g. the original NTT agreement); and to the lowering and ultimate elimination of Japanese tariffs on semiconductors.

It is difficult to overstate the seriousness of the restraint on competitive American producers in a major market that is implied by these figures. As we mentioned earlier, the United States ran a $113 billion trade deficit in 1985 in manufactured goods alone. Part of that deficit, $2.1 billion, was in a strong U.S. sector, one in which we should have a trade surplus. It would appear that the reason we did not is this: The largest market in the world for these products, the United States, is open to all competitors, but the second largest semiconductor market, Japan, is not.

Dumping. Perhaps the best single example of the policy of Japanese semiconductor producers to buy market share in the United States is the now famous Hitachi memo. This was sent by Hitachi in the Spring of 1985 to its distributors in the United States. Our understandings is that this memo contained the following instructions:

> Quote 10 Percent Below Competition. If they Requote, Bid 10% Under Again. The Bidding Stops When Hitachi Wins ... Find AMD and Intel Sockets. Quote 10% Below Their Price. If they Requote, Go 10% Again. Don't Quit Til You Win. 25% Profit Guaranteed."

This evidence of Hitachi's pricing policies in the United States hardly needs amplification. It is appropriate in the context of a general discussion of dumping and semiconductors, however, to express NAM's view that the Department of Commerce was right to open its own investigation on the question of the dumping of certain semiconductors (256K and above DRAMs) by certain Japanese firms. Regardless of the outcome of that or other dumping cases, it is important to keep in mind the very close connection between less than fair value sales, dumping, and the targeting practices described in SIA's 301 petition.

Dumping, and the overcapacity that leads to it, would be far less likely if the Japanese industry operated in a normal commercial environment rather than the protected, secure environment that has been created for them by Japanese government policy. The problem is well illustrated by an observation in the brief in this case that was submitted by SIA on October 22, 1985. "At present," they said, "Japanese firms are investing to grow at

a rate of 40 percent [per] year through the late 1980s when long-term world demand is growing at a rate of only 16.5 percent per year." Investments like this suggest planned dumping, and they would not be possible if Japanese producers had to contend with normal commercial risks in the Japanese market.

Government support. SIA has done a good job at documenting the multifaceted assistance that the Government of Japan has provided that country's semiconductor industry. As SIA has pointed out, the first law for the promotion of the electronics industry in Japan was enacted in 1957, the year the integrated circuit was invented, and the electronics industry, including semiconductors, has been the beneficiary of subsequent laws with the same objective. Briefly, that is to assure Japanese success in the named (targeted) industries. Government assistance has included quotas on Japanese semiconductor imports, subsidies, the evolution of a de facto industry cartel (involving limits on the number of firms in the industry and anticompetitive production sharing arrangements), and countermeasures to offset the effects of trade liberalization actions undertaken by the Government of Japan.

COUNTERMEASURES

SIA has provided an invaluable chronology of U.S.-Japan trade in semiconductors. This illustrates that incidents of trade liberalization, e.g. the elimination of Japanese import quotas on certain integrated circuits in 1974, have been followed by measures designed to counter the effects of liberalization. In

the episode cited, one of these was administrative guidance from MITI (Japan's Ministry of International Trade and Industry) to computer companies, advising them to buy Japanese.

The regular practice of implementing measures to offset the effects of trade liberalization raises grave questions. It has long been the policy of the United States government to try to maintain an open international trading system, one that maximizes the ability of goods and services to move freely in international commerce. This policy has, by and large, been strongly supported by American business. Yet the maintainance of an open international trading system depends to a great extent on the ability of the United States to conduct successful negotiations with our trading partners.

The world is probably sufficiently complex to make it possible for any government to devise strategems that effectively undo in the marketplace the promises it has made at the bargaining table, and it would appear that in some areas Japan has done just that. NAM believes that to allow successful negotiations to be so undermined is to undermine the trading system itself. This is especially true when the parties to the negotiations are the world's two largest economies. The SIA petition presents an opportunity for the U.S. Government to show that the United States will not allow bad faith bargaining to go unchallenged.

SIA AND SECTION 301

The evidence adduced by the Semiconductor Industry Association would appear to demonstrate that Japanese policies respecting trade in semiconductors contravene Japan's obligations to the United States under the General Agreement on Tariffs and Trade and the 1953 Treaty of Friendship, Commerce, and Navigation between the United States and Japan.

The denial of benefits under a trade agreement is, of course, only one of several bases for action against an unfair trade practice by a foreign government under Section 301 of the Trade Act of 1974. The information provided to your office by the Semiconductor Industry Association suggests that Japanese policies in this area are also unjustifiable, unreasonable, and discriminatory, and certainly they burden and restrict U.S. commerce.

RECOMMENDATIONS

We referred earlier to the Houdaille petition, filed in 1982 under a different provision of law (Section 103 of the Revenue Act of 1971) but dealing, like the SIA petition, with Japanese targeting. The earlier case related to machine tool imports from Japan. The company that filed the case is no longer in the machine tool business.

In the present instance, we are concerned not with a company but with another critical industry, an industry in which the signs of stress are clear. It is a world leader with a trade deficit. It is an industry in which the tenth largest producer, Mostek,

ceased operations last year, and other important producers have dropped a major product. In October of 1985 both Motorola and Intel announced that they would no longer produce 64K DRAMs because of "severe price erosion." It is also an industry on the cutting edge of technology, where our ability to stay ahead as a country will be crucial to the effort to regain American international competitiveness.

NAM believes that the presentation made to the U.S. Government by the Semiconductor Industry Association is compelling. We have faith that the Administration will agree that the Japanese government has acted unfairly and that the U.S. industry has been injured. If this is in fact the U.S. Government's view, we urge it to make public a determination to this effect as soon as possible.

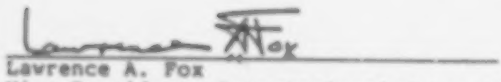
Last September, when the President took the unprecedented step of self-initiating a series of 301 investigations, he made an important contribution to the development of a more effective U.S. trade policy. NAM applauded those actions because we believe that the self-initiation of cases sends a signal to foreign governments that is far more significant than the simple acceptance of a case for investigation. Where, as in the present case, a petition was filed and accepted prior to the Administration's first use of self-initiated 301s, that technique is not available. It is nevertheless crucial that the Government of Japan and other governments be made aware that the President will protect American interests that are unfairly threatened by foreign government targeting. If the U.S. government is unable to convince Japan of

its commitment in this area, it is unlikely that she will take the genuine market opening measures that are called for and that will yield an increase in U.S. semiconductor sales in Japan.

An early, formal determination on the merits of this case offers the opportunity to demonstrate the U.S. government's determination to take effective action. It does so without the inevitable cost of sanctions that all concerned would prefer to avoid. In urging the Administration to act quickly in deciding the principal issue in this case, the National Association of Manufacturers wishes to associate itself and its members with the following statement, which can be found in the preface to the brief filed with the U.S. Trade Representative's Office on October 22, 1985:

> In our view the proper role of the U.S. Government is not that of an impartial adjudicator, but of an advocate of legitimate U.S. commercial interests.

By this we do not mean "unfair procedures" to reach a predetermined decision. We mean procedures that are fair, prompt and in keeping with the intent of Congress to enhance market-determined conditions of trade.



Lawrence A. Fox
Vice President, International Economic Affairs
The National Association of Manufacturers

NAM
National Association
of Manufacturers

LAWRENCE A. FOX
Vice President
International Economic Affairs Department

July 18, 1985

The Honorable Max S. Baucus
Room 706 Hart Building
United States Senate
Washington, D.C. 20510

Dear Senator Baucus:

I should like to commend you and to express NAM's support for your authorship of the "Japanese Technical Literature Act of 1985," S. 1073. It is often said, sometimes in jest and sometimes in great earnest, that one of Japan's biggest non-tariff barriers is the Japanese language itself. Americans are not known as linguists, and, compared with the more familiar languages of Europe, Japanese is a hard language for speakers of English. That is an inconvenience, but as a society we cannot afford to allow it to determine what we know.

Japan is today America's principal economic rival. In achieving that position, it has been very much to Japan's advantage that English is the world's second language--for Japanese students, the pay off for learning English can be enormous--and that, in so far as the dissemination of information is concerned, the United States is perhaps the most open society in the world. U.S. industry has no quarrel with the Japanese for learning from us, their competitors. To the contrary, there is general recognition among our members that the time has come to learn more from the Japanese, especially, in areas where they have become the world's leaders as they are in certain process technologies. Your bill takes an important step in that direction by encouraging and assisting the Commerce Department to make more Japanese technical literature available to more American scientists and research people.

As you know, NAM has long been convinced that there can be no meaningful improvement in the U.S. trade performance without correction in the present dramatic misalignments in the exchange rates that link the dollar to the other key currencies of the world, certainly including the Japanese yen. That and efforts to improve the floating exchange rate system are essential, but they are not going to be enough. We are going to be faced with a series of hard policy choices in trade in the next year or two, and I would suggest that none of them will be enough if we are

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not prepared to look after the details of competitiveness. By itself S. 1073 is only a small step. As an expression of our country's willingness to deal with the nuts and bolts of competitiveness, however, it is an important one. It is for these reasons that NAM is pleased to support this legislation as part of our commitment to competitiveness.

Sincerely,

Lawrence A. Fox
Vice President
International Economic Affairs

Chairman GIBBONS. Thank you, Mr. Fox, and thank all of the panel. The order of discussion this morning will be Mr. Crane, Mr. Schulze, Mr. Pease, Mr. Jenkins, Mr. Frenzel, and Mr. Duncan. Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman. I want to welcome the witnesses before the committee today.

In listening to a range of testimony, not just yours but others who have come before the committee, this problem obviously is an incredibly complicated one and it does not focus exclusively on trade deficits per se. There are ways we can address trade deficits by altering some of our policies, but that still would not provide any relief to any of you that have testified here today.

For example, selling the raw cut timber off public lands would help. Selling Alaskan oil would help in the trade imbalance but it still does not focus on the access to foreign markets problem and unfair trade practices.

There are other governmental actions, it seems to me, too. We had, for example, a raging debate back a year or so ago on increasing the U.S. contribution to the International Monetary Fund. It seems to me that the IMF works directly contrary to the interest of many American businessmen trying to do business abroad. The conditions for those IMF loans to debtor nations were that they reduce imports, that they maximize exports and there was even pressure brought to bear on the case of Thailand to debauch their currency in order to enhance their trading position vis-a-vis countries like the United States with stronger currencies, all of which are poor policies with the exception of encouraging them to export. The other two criterion imposed on governments that are recipients are directly contrary to the best interests of free flowing trade and providing consumers with the greatest goods at the lowest possible price. They create an economic chaos that almost resulted in the overthrow of the Thai Government.

Would you gentlemen concur in the inadvisability of the United States promoting that organization?

Mr. MEAGHER. I don't know if I want to kill the organization, Congressman.

It seems to me there needs to be a balance struck between the role that we play to promote exports and to in fact provide goods for consumers in this country, and the role that the Government plays in trying to ensure that domestic manufacturers can compete not only in the world market but here as well.

I don't necessarily agree with the idea of getting rid of the International Monetary Fund.

Where I come out on it in terms of the question is to agree that many of the problems that we face are not traditional trade problems. These need to be looked at in some sort of a concerted way, so there is not pressure necessarily put on the trade remedies—inappropriate pressure—to solve the problems.

I think if you start to look at those things in a long term way as a whole, that you can moderate the policies that impact on the cost of production, which is what you are talking about, credit. It is cost of money. That is what we are talking about. Whether I got it at 2 percent or he has it at 2 percent.

Mr. CRANE. It really goes beyond that. As I say, what they did in the case of Thailand as a specific case in point, is put the pressure on them to erect tariff barriers to entry of products into their country and simultaneously put pressure to bear on them to alter the value of their currency to give them a potential trading advantage. As I said, it created chaos in Thailand, injurious to a country that has been a very strong ally of the United States. That is not an isolated example. That is just one of the more extreme.

Mr. FOX. Congressman Crane, I wouldn't agree with you entirely with respect to the IMF. It is obvious when a country is out of money, it has to cut the suit to fit the cloth and import controls certainly have a place under those circumstances. That is the problem evidently in the case of Mexico. I think the IMF also has an important role in helping finance the LDC debt.

I think the problem you are citing is an important problem as to how countries that have run out of foreign exchange can continue to grow and pay off at least the interest on their international debt. I think the subject of cooperation between the IMF and the World Bank and commercial banks is too important to say that the IMF simply should be pulled out of that equation.

The situation with respect to Thailand, I am not familiar with. I would urge that we think of the IMF as having a broader role than just the role you cited with respect to limiting imports. I think if foreign exchange is not there, the country will have to limit imports in any case.

Mr. CRANE. That inevitably leads us to the problem of how we deal with unfair trading practices which exclude us from markets. In other words, what I am suggesting is problems of debtor countries inevitably put in the position of having to deal with the symptoms.

Mr. FOX. I think we should deal with discriminatory action by countries that are limiting imports. If they are limiting their imports across the board in accordance with some agreed basis of the nature of their financial problem, that will have to be acceptable temporarily. If they are limiting imports in a way that is discriminatory against the United States and favorable to other countries, of course we want to crack down on that. The United States can do that bilaterally with our own powers with respect to the country concerned. It could be a matter of action on our part through GSP and through any number of trade laws including dumping and countervailing laws, if they are possible.

Mr. CRANE. That was not the IMF that made that loan. It was the Eximbank, which is a U.S. Government agency.

Mr. MILLIAN. Mr. Congressman, I think there is a related problem here in the use of those international institutions in which, obviously, the Americans have considerable power and tax dollars invested. For example, loaning money to governments abroad to build facilities to directly compete with things that we make in the United States. That phenomenon has not really been focused on by this committee. I think it is something to which we should give attention.

Chairman GIBBONS. It has been focused on by this member; I can tell you that.

Mr. CRANE. Correct me if I am wrong, but IMF can only make loans to governments.

Mr. MILLIAN. I am broadening your question slightly to those other institutions where the United States has both influence in and tax dollars, such as, for example, loaning money to Morocco to build a phosphate industry to compete with our fertilizer industry.

Mr. CRANE. Another thing that was raised—John, you raised it in your testimony, about the component in the total equation of increased productivity. There are a lot of ways in which our Government has injured American manufacturers and their trade performance. Why, for example, are certain drug companies barred in the United States? Because of FDA rulings that apply to us here that do not apply in other countries that have their own standards. Why are they banned from exporting into those markets? They are at the present time. They have to go outside the United States, set up a pharmaceutical firm in some other country if they want to produce goods that do not meet FDA approved standards.

Another is the stupid cafe regulations based on totally erroneous information at the inception, namely we are running out of fossil fuels. That has provided a prestigious cost to American automobile manufacturers. It has hurt their competitive position. Fortunately, those standards were relaxed. Who cares whether American cars only get 10 miles to the gallon. That is a consumer's worry. It will be reflected in marketplace decisionmaking but to impose those kind of artificial standards based on false assumptions at the inception, which were known, I mean nobody thought we were running out of fossil fuels even in 1973, but the fact is we have a lot of regulations on our books like that.

The thing I mentioned about FDA applies to Consumer Product Safety Commission standards. We are imposing our domestic standards on American companies that could compete in foreign markets where they have standards, too, but they are not as stringent or costly as the ones we are imposing on those who manufacture domestically.

All I am trying to stress is I think there are a lot of components in this problem that the Congress should be devoting attention to in addition to the legitimate grievances that inevitably attend distressed countries or emerging countries' efforts to get into this competitive market.

One other one that John mentioned was the antitrust laws. I was with the American Productivity Center in 1981 on a trip to Japan. The Japanese asked, why do you have those antiquated antitrust laws on your books. You are dealing in world markets. They cited the instance of bringing in half a dozen heads of competitive companies and farming out the R&D effort so you are not duplicating research. One of us asked who gets the patent when you make a breakthrough. They said, who cares. The fact of the matter is they get proprietary after the breakthrough. Ours is a great economy but our antitrust laws go back to an emerging industrialized society, better than a century ago and are totally irrelevant to today's needs and today's kind of market situations.

I want to congratulate you gentlemen for your testimony. It is an important contribution. I would hope that when we have some-

thing a little more concrete and specific, that you might come back and give us your insights on that, too. Thank you.

Chairman GIBBONS. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

Let me pick up where Mr. Crane left off. I, too, would like to congratulate Mr. Meagher and his company on the efforts they made to broaden antitrust proposals to address international competitiveness. It was important and will be more important as time goes on.

Let me also say whoever it was that brought up the fact that we are loaning money to build where there is excess worldwide capacity, it is one of the most backward things and self defeating things we could possibly do.

I might also congratulate the panel. I thought all your testimony was excellent.

When you mentioned strengthening the role of the STR, I agree that we should. I hope we will. As we do that, Mr. Chairman, I think we should also keep one eye on eventually having a Department of Trade. I think we have skirted the issue and the political concerns of the issue, but you cannot tell me that in 5, 10 or 15 years, that international trade is not going to be not only vital and one of the keys to our economy but to the economic well being of the world.

As a consequence, whether we call it the Department of Trade or we just beef up the STR, it is going to be vital to us as a nation that we go in that direction and we should keep that in mind as we go through this type of legislation.

I would like to thank Mr. Meagher for his two references to my magnificent legislation which would cure the ills of the international trading structure. All we have to do is convince everybody else.

I might take a minute to talk about bilaterals. I view bilaterals as a no lose situation. It does build a fire under GATT; it says if you don't get going, if you are not successful, there are other methods. If we take the presumption, although none of us really want it, that GATT does collapse, we must have some international trading structure. If we are hanging out all alone, we are the ones who are going to suffer because we have the largest consumer market in the world and if we cannot regulate it, if we don't have some international body, we are the ones who are going to lose. I think it is essential that we go the bilateral route at the same time.

Somebody else mentioned specific negotiating authority. I agree. I have talked this over with the STR. We as Congress are exerting more influence in the trade area. I'm afraid if we had not, we would not have made the gains we have. We are going to continue. When these things happen, the administrations never likes it. We are hoping the pendulum doesn't swing too far but the message we are sending to those of our trading partners is if you don't level the playing field, we are going to.

We have spent the last 40 years aiding most of the economies of the world, acccepting unemployment from most of the other economies in the world and other nations and especially the LDC's.

International trade is not macro. It is micro. If you have a plant in Singapore that is making rivets and selling them here and you happen to displace a few workers here by that process, maybe it

adds up to macro but every international trade transaction is micro. We have to keep that in mind during these negotiations.

I guess I don't really have an awful lot of questions for the panel because we are in pretty much agreement, unless anybody would like to comment on anything I have said. If not, thank you, Mr. Chairman.

Does anybody have anything to add? If not, thank you, Mr. Chairman.

Chairman GIBBONS. Yes, sir. Mr. Jenkins.

Mr. JENKINS. Thank you, Mr. Chairman. I want to thank the panel for each of your statements.

Mr. Fox, your organization represents some 13,000 manufacturing concerns. Do you know how many of those are engaged in exporting? What percentage of those are engaged in exporting?

Mr. Fox. In exporting?

Mr. JENKINS. Yes.

Mr. Fox. Well, I'd say, yes, we do. I think the great bulk of manufactured goods exports are manufactured by our members. All of the major manufacturing concerns in the United States are members of NAM. That runs from——

Mr. JENKINS. Let me rephrase that a bit. According to the Department of Commerce, there are 300,000 manufacturing concerns from the smallest to the largest in the United States. Less than 10 percent of the total are involved in exporting. 270,000-plus firms are engaged only in manufacturing for this marketplace.

I'm not trying to minimize the importance of exporting. I simply want to know how many of your members of the 13,000 that represent some 80 percent of the industrial production in this country, some 85 percent of the manufacturing employment in this Nation, are engaged directly in exporting? Is that 10 percent roughly correct with your members as well?

Mr. Fox. Well, actually I don't have a figure, Mr. Chairman. We will give some thought to trying to develop one. You asked the question "directly engaged in exporting."

Now we know an awful lot of members are indirectly involved in exporting. There are part suppliers for Boeing—there's a very interesting chart that Boeing has made available to us, and I think to Members of the Congress, showing their parts suppliers, who are located in every one of the States. So it takes a little thought to give an adequate picture of the export interests of our members.

But if we can develop something like that, Mr. Jenkins, we'll supply it to you.

Mr. JENKINS. I'd be delighted to see that. Each of those that supply to Boeing and the other major exporters are included in that 300,000 figure that I gave you, with less than 30,000 involved in exporting.

The point I want to make is that most of the great bulk of manufacturing concerns are manufacturing for this marketplace, without any question, do you agree?

Mr. Fox. Well, the ones that export, of course, are manufacturing for this market. I think that foreign trade today means exporting and competing vigorously for own market against imports, and we consider our responsibilities at NAM to be directed toward both.

Mr. JENKINS. Oh, I'm not criticizing your representation of the exporters. I'm just trying to find out who you represent.

Mr. FOX. I'm trying to say, we represent those who stay right at home and fight imports, too.

Mr. JENKINS. They also tell me that of that 30,000, less than—90 percent of the exports are handled by less than 2 percent of that 30,000. So, we have a very small number of manufacturing concerns that are really engaged in exporting. Most of our manufacturing concerns are engaged in manufacturing for this marketplace here.

Thus, my concern. I'm not trying to say that I do not have a concern for the export/import, because obviously I do. But, I want to emphasize that most of our manufacturing concerns actually manufacture for this marketplace.

Does the panel generally——

Mr. MILLIAN. Excuse me, if I might make this contribution.

Mr. JENKINS. Sure.

Mr. FOX. The estimates vary depending on the date, but we would guess at this time that about 20 percent of our goods output, manufactured goods output, is exported. That means 80 percent is not. So it gives a relative picture of the importance of both the domestic market and the international market to our members.

Mr. JENKINS. Thank you.

Does the panel generally agree that Japan, to use an example, has successfully used targeting as a method of obtaining a greater market share of export markets? Is there no question about that?

Mr. MILLIAN. I would say that's obvious.

Mr. JENKINS. Does the panel generally agree that Japan, as an example, has in the past and continues today to a great extent to engage in protecting its domestic marketplace?

Mr. FOX. Absolutely.

Mr. MILLIAN. Certainly.

Mr. JENKINS. Japan has a huge surplus in trade. We have economists saying that Japan will become the wealthiest nation per capita in the near future. It seems to be working for Japan.

But all of you are opposed to protecting our domestic marketplace. Are you opposed to our targeting? What is your opinion about that? It seems to be working for Japan. I'm just curious why it works for them and it wouldn't work for us.

Mr. MILLIAN. Mr. Congressman, if I could begin to answer that. I was the labor columnist for the Japan Times in the 1950's. The U.S. Embassy saw me at least once a week, trying to push something called the Japan Productivity Center.

We brought, with our tax dollars, at least 20,000 Japanese workers and managers to our country to learn how we did things. So although we can point at Japan and say that they are doing this or that, it is partly our fault, because we have created in them this ability to take advantage openly of certain things.

It isn't just onesided. I agree with what you're saying, but I think also that we stimulated a lot of their growth.

Mr. JENKINS. In what way?

Mr. MILLIAN. In the sense that we brought them over here to learn how to produce things better.

Mr. JENKINS. We taught them?

Mr. MILLIAN. We taught them. In fact, I think there's a professor at George Washington University who was given the highest ranking order by the Japanese Government on productivity in automation.

My point is that there are other countries in the world which are of equal concern to our industries, not just Japan.

Mr. JENKINS. Oh, I understand that. I was just using that as an example, because they seem to be so successful.

Yes, Ambassador.

Mr. WOLFF. Mr. Jenkins, I think that the aspect of targeting that is covered in your bill deserves a good deal of attention. A strong response is necessary, a national response. In the last Congress, Congressman Gibbons and this committee formulated an approach to targeting that provides a mandatory response against injurious foreign targeting under the countervailing duty law.

We felt in LICIT that a broader response was necessary, and this time the staff draft has a response under section 301, but it's not mandatory. We would suggest that it be made mandatory.

A broad response is necessary. When there is targeting, we may have to protect our industries that are targeted, that face the targeted competition. But we also need market access in that foreign market to prevent the foreigners, whether it's Japan, Korea, Brazil, or Mexico or whoever is using that set of policies, from being able to compete from a protected home market against our industry.

We will also need some measures for our own folks. Congressman Schulze mentioned antitrust law reform. That's a part of a response. Joint R&D in this country is part of a response. There are a variety of responses which could be allowed in connection with a 301 response by allowing fast-track legislation, have the administration put together a comprehensive response enhancing our competitiveness, and acting against unfair actions from trade abroad.

Mr. JENKINS. Every nation, to some degree, protects its own marketplace, does it not?

Mr. WOLFF. Certainly.

Mr. JENKINS. As a matter of fact, during the great debate on the textile bill, I was amused somewhat at the cries of protectionism.

Does Korea let any apparel, Ambassador, from Malaysia or Thailand into its marketplace?

Mr. WOLFF. The leading developing countries are among the most protectionist in the world when it comes to goods like clothing.

Mr. JENKINS. You mean these nations that were screaming protectionist at me do not let apparel in from lesser developed countries?

Mr. WOLFF. Well, we account for some 70 percent of the clothing imports from the developing countries, and the remainder is largely made up by Europe, a little bit by Japan, and there's very little room for any other textile imports into the developing world.

Mr. JENKINS. Why wouldn't Korea let apparel in from Malaysia or Thailand into its marketplace?

Mr. WOLFF. Pure protectionism.

Mr. JENKINS. I'm shocked, totally shocked. [Laughter.]

If we should pass this generic trade bill, does the panel think that it would make much of a dent in our trade imbalance?

Mr. MEAGHER. No, I don't think so.

Mr. JENKINS. Less than 1 percent?

Mr. MEAGHER. Probably. It's a long-term measure that is important and will have an impact on the ability of American companies to deal with unfair trade practices. There's no question about it. But I don't think that it's going to make any difference in the short run, and I think there needs to be a political statement made, as well as an economic statement, in this legislation that says, "Enough is enough."

And our group feels that what this country has done—and the consumers in the private sector have done it—is to provide the basis for the world to come here with their goods and services and to sell them, and that's fine. I don't think any of us disagree with that. But what we do disagree with is that they don't pay in order to play. They don't share in the burdens of this society. They don't share in the environmental laws; they don't share in the antitrust laws. They don't share in the regulations that Mr. Crane referred to.

And yet in their countries, in order for us to get in, we have to share in those things. And so we advocate something more than trade law reform in this legislation. And we urge it in the form of a surcharge.

Mr. Fox. Well, I don't agree with a 1-percent estimate at all. I think that getting proper authority to open up foreign markets through 301 and other means is a very positive way to get the trade deficit down. I think getting the exchange rate on a solid track, so we can count on it for the future not to be a negative force is very important. I think getting the trade negotiations underway within the GATT, so that our future advantages and some of our existing advantages with respect to intellectual property rights are protected are very, very important.

I think getting our trade laws right represents getting a proper underpinning to our trade policy, to make the steps that we have to take additionally with respect to competitiveness pay out, and I think it's a serious mistake to minimize the importance of what we can do by getting our fair trade laws modernized and brought up to date and made to operate effectively and promptly.

Mr. SAMUEL. Mr. Jenkins, I suppose it's hard to believe that there's a third position to take here, but I would like to suggest that there is.

I think Mr. Fox is right. This bill is extremely important. It should have been passed 10 years ago, and every year that we delay, the damage is going to be greater. If it doesn't have an immediate effect in 6 months, it will have an effect in 12 months and 18 months and the years ahead. And your successors and your successors' successors will appreciate what you've done. It's absolutely essential.

On the other hand, I think Mr. Meagher is right, that it probably will not do the immediate job that is also required. And I can't speak here now for LICIT, because LICIT has not taken a position on emergency measures, but it's very clear to me that we face a very short-term problem which should be surmounted, should be

responded to, and if we do respond to it, then it seems to me it will make it even easier for the generic bill to carry out its purposes.

Mr. JENKINS. I guess my time is up, Mr. Chairman.

Chairman GIBBONS. I think at this time, it would probably be better if we recess to go vote.

[Brief recess.]

Mr. PEASE [presiding]. Would the panelists and the audience take their seats, please?

The chairman has asked me just to resume the hearing until he gets back. Let me thank the panelists. I thought the testimony was excellent from all of you. We very much appreciate your appearing before us.

I would particularly like to commend the representatives from LICIT. I think this coalition has done an excellent piece of work in putting together the LICIT proposal, and I commend my colleagues, Mr. Guarini and Mr. Duncan, for having introduced it.

I was especially interested and pleased at your recommendation on trade adjustment assistance and tying it in with section 201 relief for industries.

I guess the only question I would like to ask our LICIT representatives is whether we should have in this package we are putting together any sector-specific language. I see a title in the draft bill for telecommunications. Should we also have one for steel or textiles? I know some of your coalition members are interested in both of those areas, presumably as well as telecommunications.

What is your recommendation in that?

Mr. WOLFF. If I might respond, Congressman Pease, LICIT by its charter does not take positions on sectoral issues. However, there are issues that affect particular sectors very substantially and with a good deal of harm that need to be addressed in this bill.

We have approached the problem of telecommunications as basically a Government procurement issue, and in our bill we have called for a mandatory response to achieve open access abroad or to rebalance the trade with restrictions on our market. If we have unilaterally opened up our market to others and they, through Government measures, have kept their markets closed, as they have in telecommunications, there would be a response. Similarly, natural resource subsidies affect some sectors more than others, but it is a generic problem.

So we prefer a generic approach. We have not advanced any steel or auto or chemical or any other sectoral amendments, but we believe that the generic approach we have taken to deal with specific problems can remedy some of the fundamental problems and challenges these industries face.

Mr. MEAGHER. Mr. Pease.

Mr. PEASE. Yes.

Mr. MEAGHER. If I could respond to that, in my testimony I urge that there be something related to steel and other existing trade agreements. We think that in the case of the steel stabilization agreement, that it was really an arrangement that was made between the President of the United States, the Congress in the Steel Stabilization Act of 1984, and the industry, and that it hasn't worked very well and it needs to be nailed down.

As I said in my testimony, we believe that there needs to be a provision in this bill not only for steel but for other areas. When you have these kinds of arrangements, there needs to be a backup to ensure that they happen. You brought something to the table with the grant of authority, the administration brought something to the table with its effort to go out and negotiate voluntary restraint agreements, the industry brought something to the table when it dropped its cases, and labor did the same thing.

The result we get under the existing framework of law is one in which the cheaters are rewarded, and the people that deal at arm's length and deal early are penalized. What has happened in the steel program, very simply, is that the countries that came in early on VRA's have ceded their market to those that have failed to come in at all. The reason that the program isn't anywhere near its target—it's at least seven points away from its target—is that those countries which have not negotiated under this program are responsible for the lack of getting to the target. And, there is absolutely no incentive for them to come in. There is nothing in the law, there is nothing in the agreement that gives them the incentive to play fairly.

So we would urge this committee to look at that question of enforcement of existing agreements and provide some mechanism for dealing with the question so that the incentives are reversed to reward those that have, in fact, played fairly and to penalize those that haven't.

Mr. PEASE. Thank you, Mr. Meagher. I note in your testimony that you had called for some legislation. As you point out, we are a year and a half into those steel agreements, supposedly 3½ years to go, and at the end of the 3½ years from now, the U.S. steel industry is supposed to have used the increased cash flow from these restrictions to modernize and be thoroughly competitive.

It seems to me we are running out of time pretty quickly. Do you think that this omnibus bill that we are putting together this spring is the appropriate vehicle for some legislative action?

Mr. MEAGHER. I do. As a matter of fact, speaking of cash flow, we are required under the Steel Stabilization Act to invest all of our net cash flow into steel modernization. Well, last year the industry in total lost $1 billion, so the net cash flow is minus $1 billion right now that would obviously not go into that program.

As you point out, there are 3½ years left and the clock is ticking every day, so that if there is going to be legislation to help the steel program—and I happen to think that it should be—this is probably the only vehicle that is going to present itself for that kind of action.

Mr. PEASE. Mr. Wolff, I was especially interested in your comments that I gather came out of the LICIT bill, that Congress ought to require the administration to state its policies and objectives regarding trade, I suppose annually. Could you amplify a little on what you are talking about there?

Mr. WOLFF. This is in H.R. 1950. The notion is that, as with most of us, the administration tends to be in a reactive posture all too often. And it's not this particular administration has been worse than any other. Our proposal is based on the observation that if you don't have an idea of what the priorities should be at the

outset, and different individuals will have different ideas of what priorities should be, then you tend to deal with whatever appeals in your "in" box that morning. That is a heck of a way to run a nation's trade policy.

There has to be, in any negotiation, priorities set. If you go into a multilateral round of negotiations, there are only so many things that you can give utmost emphasis to. That dynamic is absent from day-to-day trade policy formulation. When we deal with other countries, when we deal with international organizations, it is not natural to sit down first and set priorities.

If priorities are established with the committees of the Congress having responsibility for trade, if the special trade representative sat down at the beginning of the Congress, as the President must do with the budget process, and say what the administration's priorities are in trade, the Congress would have an opportunity to weigh and give its advice and help alter and shape those priorities.

I think that would be an important change in the way the country looks at trade problems.

Mr. PEASE. I think that is an excellent idea, and I hope, Mr. Chairman, that we might pursue that.

Mr. Meagher, let me return to you. I also was appreciative of your endorsement of the idea of adjustment assistance since that has been a particular interest of mine. I was interested in your recitation of factors involved in the noncompetitiveness of United States industry. It had nothing really to do with trade. You mentioned one of them, antitrust laws. I was sort of intrigued by that.

It has been a long time since I have studied economics, but when I did, professors used to talk about economies of scale and about competition as a good way to foster competitiveness in the introduction of new equipment and new techniques and so on.

When they talked about economies of scale, they used to say that you can gain advantage up to a certain point, but after that point you go back down again on the scale, and that therefore some aggregation of economic power is good but beyond that it doesn't do any good and you lose out.

Do I take it from your comments that you think the antitrust laws of the United States prohibit American industry from reaching the necessary economies of scale? I would have thought, with all the mini-mills around, for example, in the steel business, that they are pretty small and they seem to be cleaning the clocks of the big, integrated mills.

Mr. MEAGHER. First of all, to compare the mini-mills to the integrated manufacturer is comparing apples with oranges. They don't produce what we produce, and they have a totally different situation with no historical background. So I don't think that that is the case on which your point ought to rest. I don't think there is any disagreement that the ultimate form of competition, the ultimate result of competition is monopoly, and that what you end up with is a situation where you can lessen competition by not having antitrust laws.

I am not suggesting that there not be antitrust laws. What I am suggesting is that what has happened in the past in this country as a result of our antitrust laws, and understandably as a result of them, is that we have looked at the domestic market as the basis

for competition and have excluded the foreign competition in calculating whether or not combinations can take place.

That has not happened overseas, and what I was simply suggesting is that there is now a recognition on the part of the administration, at least, that we need to bring into the determination of antitrust the question of the international marketplace.

All I am suggesting is that in the past, the lack of parallel kinds of antitrust enforcement has meant that we have had a lesser competitive edge vis-a-vis our cost of production. We haven't been able to achieve, in many instances, the economies of scale that you have discussed, whereas others have. That is not to say you ought to throw the baby out with the bath water, but we ought to recognize that there is a cost factor involved in the variance between those two systems.

Mr. PEASE. Yes, sir.

Mr. FOX. Mr. Pease, I think you will want to look carefully at the administration's proposal for that merger authority. It has some fine print in there that we think is very undesirable. Where a merger would take place, the industry would not have access to 201 for relief for 15 years. That strikes us as very illogical. They couldn't file for the first 5 years; if they were to wish to do so, they would have to give up the provision with respect to antitrust relief.

I think if there is 75 percent of the market domestically produced and 25 percent imports, and your imports are coming from low cost producers around the world, including Korea, Japan, and other countries, you have plenty of competition in the market, and it seems to me that we are being hung up on old fashioned things when we have a provision like that in the merger authority which is supposed to be beneficial to those who use it.

Mr. PEASE. OK. Thank you.

Last, Mr. Meagher, you mention in your testimony that you support the Schulze and Rostenkowski bills which would impose, I believe it is, 20 percent and 25 percent tariffs on goods coming in from countries like Japan which have large trade imbalances with us. Others have criticized those bills as open and shut violations of GATT. Does that bother you at all?

Mr. MEAGHER. I am not a GATT legal expert, but as I understand the GATT—and Alan Wolff is. Maybe you should ask him that, rather than me. But if you ask my opinion as to whether it bothers me, it bothers me to the extent that GATT doesn't seem to be as relevant today as it was. I think it needs work. But it is a case that ends up being tried in court. There is no de facto GATT yes or no. Lawyers take cases and they try them. I would be prepared, I think, with my limited knowledge of GATT, to try that case.

Mr. PEASE. All right. Thank you. I find that interesting.

Mr. Wolff, did you want to comment? Well, let me just ask you a factual question. In your opinion, would these tariffs, 20 percent, 25 percent, be violations of GATT?

Mr. WOLFF. Unless there was some balance of payments emergency, for example, which would justify the imposition of a short-term temporary tariff for balance of payment purposes, it would be a clear violation of the GATT.

Mr. PEASE. I see. Thank you very much.

Chairman GIBBONS. Before I go to Mr. Guarini, let me pay particular attention to the work that you have done, Mr. Guarini, with the members of this panel in working on trade legislation. We applaud it and are glad that you are here.

Mr. GUARINI. Thank you very much, Mr. Chairman.

I do want to apologize for having been unavoidably detained for personal reasons, but I most of all want to thank you for calling these hearings and for your leadership on trade and your commitment to overhaul our trade laws, and I think that each and every one of us are very grateful to you for this stance that you have been taking.

I had just come back with you and the rest of the committee and our chairman, Dan Rostenkowski, from a weekend seminar on trade reform and discussions as to how we can turn around our trade picture, and many of the discussions of some of the advice we got that macroeconomics will take care of the whole problem, that there may not even be any need for any trade reform laws.

I don't share that opinion and I think that we must go beyond macroeconomics if we are really to send the right signals out to the rest of the world, and we must reform our trade laws. The antitrust provisions that have been talked about, our research and development, our tax laws that have been referred to, all of it is part of the large picture, and H.R. 1950 is an attempt to work in that direction to reform the trade reform laws where they are deficient.

We have, right now, 108 sponsors. Mr. Duncan is the cosponsor of this bill, together with many members of the committee. It is bipartisan, as the issue is properly a bipartisan issue. And it covers all regions of the country, so that we do have a very broad base of support.

What we essentially want to do is to have a national trade strategy, and what was referred to by Mr. Wolff just recently as the national trade plan is very, very important. We have to get our act together, know where we are going, define our priorities. And put down a plan so that we have a road map as to where we are going.

It is even handed, in that no sector is excluded from it.

And one thing that we really wanted to do very much was depoliticize the USTR. We have got to take as much politics out of trade remedies as possible and put more strength into the USTR in dealing with the other nations of the world, in handling the 301 problem, targeting, and the other things that would be coming up.

And of course, very important, we want to reform 201 and 301 and have a sufficient program for handling the subsidies for targeting, for natural resources, which are provisions that have been long discussed by this committee and have been long overdue.

So the effort that this committee will make now and a bill that I understand will be coming out of the committee will be very important to our trade deficit, which must be turned around if we are to succeed as a marketing nation.

And also, of course, we needed to address GATT and give sufficient authority for the next GATT round which will take perhaps 7 years, maybe 10 years. The last two have taken that long.

And that is no immediate help but certainly that has to be done to enforce the disputes element and provisions and to approach some of the problems that have been neglected by the earlier

Tokyo and Kennedy rounds, such as Government procurement, countertrade, subsidies, intellectual property rights, and agriculture, and many of the other areas that have been neglected.

I would like to ask Mr. Wolff, if I can, concerning targeting provision—which is, I think, one of the most important provisions that we could address in this bill. There is a difference between this bill and the committee's bill and I think we should really have it clearly spelled out as the need for mandatory mechanisms, a provision that would put some teeth into the targeting provision.

Could you address that, concerning injury tests and the need for a mandatory mechanism and this targeting provision?

Mr. WOLFF. Yes, Congressman Guarini, the committee's bill in the last Congress did have a mandatory response to injurious targeting and we would strongly recommend that this bill, reported out by this committee, have a mandatory response required to counter injurious targeting.

Targeting is really similar in some ways to the provisions dealing with organized crime in the Criminal Code. One can deal with all of the individual crimes. One can deal with individual transgressions in the trade laws. But if there is a program, a concerted program of subsidies or limitations on market access, of tax incentives, preferential financing, and every conceivable kind of Government support, then a coordinated response is necessary by our Government.

The draft that has been circulated yesterday, by the committee, does define targeting. It says it will be defined in section 301. That is a step forward. But where that targeting is injurious, we would suggest that it is extremely important to have a mandatory response.

Mr. GUARINI. But if we do not have a mandatory response, then we will lose the significant thrust forward, that it would get lost in the politics again?

Mr. WOLFF. Well, section 301 does not have a very good track record, in large part because it is now the President who has to make the decisions. Under the draft put out yesterday you would have the USTR making the factual determinations and then the President making the final determination of what action would be taken.

Unfortunately, Presidential action is seen by foreign countries as an act by the President of the United States against the sovereignty of the foreign country involved. It becomes highly politicized.

Therefore, the idea in H.R. 1950, your bill, to take the final decisionmaking authority and put it in the special trade—the U.S. Trade Representative, is an extremely important feature.

Mr. GUARINI. Well, one feature in the bill is the strengthening of the authority of the USTR.

Chairman GIBBONS. Would the gentleman yield?

Mr. GUARINI. Yes.

Chairman GIBBONS. That point about targeting, because I am very interested——

Mr. GUARINI. Yes, I would like that to be clear, because that is very important, Mr. Chairman.

Chairman GIBBONS. As I understand from the staff, the targeting provision we have got in this time does have a mandatory response,

but it is not based on the injury test. It is based upon nullification of trade agreements, and things of that sort.

Do you think that is too weak a response?

Mr. WOLFF. Well, this committee and the Congress took out the requirement, being consistent with international obligations, back in the 1974 Trade Act. It was in the predecessor statute, 252 of the Trade Expansion Act of 1962.

The reason the committee did that, as I recall, is that it was felt that the United States must be in a position to act against foreign unfair trade practices and if we were found illegal by the GATT, we would then pay compensation or we would adjust our measure or our program, but we would not have to await the deliberations of the GATT before being able to act.

GATT cases can take decades. It is regrettable, but it is true.

Chairman GIBBONS. I do not want to have to wait on GATT.

Mr. WOLFF. If this is mandatory only if there is nullification or impairment—and that has to be found by the GATT—that would be, I would think, a very weak read to rely on.

Second point, just one additional point, and that is that targeting is not an international offense. Parts of targeting programs are violations of the GATT, but targeting as such and is not likely to become proscribed by the GATT because so many of the member countries subscribing to the GATT have targeting programs.

So I do not think that we should tie ourselves—tie our hands completely—to nullification and impairment.

Chairman GIBBONS. Let me say that I would be most happy to work with you on that section, to see if we cannot do something to make it a meaningful section.

I do not expect countries to give up their industrial planning, and things of that sort, but when their industrial planning, targeting, begins to knock us out of the box, then I think it is time for us to respond. And that is—I am still very concerned about that issue.

Mr. WOLFF. I would be happy to work with you, sir.

Mr. GUARINI. Am I correct, Mr. Wolff, that the ITC is required to make a finding before the mandatory investigation?

Mr. WOLFF. Under the Guarini/Duncan proposal, H.R. 1950, that is correct.

Mr. GUARINI. Whereas, the committee report does not require that?

Mr. WOLFF. That is right.

Mr. GUARINI. So that is an additional safeguard?

Mr. WOLFF. Right.

Mr. GUARINI. Now, in strengthening the USTR, which we want him to make the findings, I understand, in 201 and 301 cases under H.R. 1950, are there any precedents that you could cite for the strengthening of the authority of the USTR?

Mr. WOLFF. Certainly, decisions of equal weight are now made by the Secretary of Commerce with respect to countervailing and antidumping duties and there was a major change in the responsiveness of that act when the responsibility was transferred from Treasury to the Secretary of Commerce in 1979.

Export control decisions, which affect a great deal of American business, are made by the Secretary of Commerce, a Cabinet officer.

The Treasury makes decisions, with respect to International Monetary Fund policy and World Bank and Regional Development Bank lending. These are often very large transactions, affecting the taxpayer and the world economy.

In the 1984 act, the authority to respond to investment restrictions was placed in the U.S. Trade Representative, rather than in the President.

Unfortunately, when the word "President" is used in the statute, it is not so very clear who finally makes the decision. Is it the White House Chief of Staff? Is it the National Security Council? Is it the domestic policy staff? Is it the Secretary of the Treasury, as Chairman of the Economic Policy Council?

Today, using the word President may mean a delegation to someone that the Congress did not intend to have a primary role in administration of the trade laws at all.

Mr. GUARINI. So actually, there is a great deal of precedence in regard to giving the decisionmaking powers to USTR, in regard to our trade matters?

Mr. WOLFF. Certainly.

Mr. GUARINI. I want to ask you one further question before I go on to the other members. On compensatory damages for dumping, I have—and this is not part of the H.R. 1950 bill—but I understand that people dump with impunity, that they dump even while a case can be in process, until the final decision is made. So there is no sanction.

Could you comment on whether or not you think that would be an additional weapon in our arsenal, to prevent dumping? To make them compensatory, so long as it is compatible with GATT?

Mr. WOLFF. LICIT has not taken a direct position on that, but it is consistent with the approach we have taken to reform of the trade laws. I personally feel, and I think that LICIT—on reflection—would support very strongly the idea of having damages a part of our dumping laws.

Right now, the penalty for dumping—once the market has been taken by the companies that have dumped—is simply to adjust prices upward. I can give you one example now in the memory chips that go into computers. Americans have largely been driven from the marketplace and now prices are being adjusted upward.

That charges our consumers, the computer companies and telecommunications companies in the United States, more for every chip they buy, but there is very little American Industry left in that area at all. There was no penalty, no damages. In televisions much the same thing took place.

Prices can come up. Dumping stops. The damage has been done. No damages have been paid.

Mr. GUARINI. So it does make sense to have sanctions?

Mr. WOLFF. I think a great deal of sense.

Mr. GUARINI. Thank you.

Mr. Millian, in regard to nonmarketing countries, governments there have been increasing the productivity of products in order to get hard currency and create an oversupply as a result of these activities.

Could you comment on how our market has been affected by these actions?

Mr. MILLIAN. Gladly.

First, if it would be appropriate, I would like to echo the compliment to you and to John Duncan, given by your chairman on the Modernization Act.

Mr. GUARINI. Thank you. And may I congratulate you on having been named a vice president of W.R. Grace & Co.

Mr. MILLIAN. Thank you, sir.

Last year, in talking about the natural resource problem, ammonia was the word. This year, the problem has extended into the next downstream stage of that product, where CO_2 is added to turn ammonia into urea pellets. Urea can be used throughout the world, unlike ammonia, which requires more sophisticated plumbing systems such as those used in the American farmer's field.

Urea from the Soviet Union, East Germany, and Romania currently comes into the United States market at $20 or more per ton less than below United States cash production costs.

If this continues, it is obvious that the plants in the United States that make urea—like the one in Tennessee which W.R. Grace is considering closing—cannot continue to lose $20 or more per ton.

These plants were not built in the Soviet Union and other countries for the same reasons—commercial considerations—that they are built in the United States. They were and are being built to create a cash return in dollars and other hard currencies.

The decision to build plants in industries where excess capacity already exists, as I said in my testimony, is made for other than commercial reasons. This behavior is not acceptable to the private sector.

If this kind of distortion continues, we will be forced to leave the market.

Mr. GUARINI. So it is an important natural resource question that we have before us, then?

Mr. MILLIAN. True.

Mr. GUARINI. And 406 we have had very little with nonmarketing countries. I do not think there has been any positive rulings on section 406.

Mr. MILLIAN. Not to my knowledge. Maybe one I do not know about, but certainly not in our case.

Mr. GUARINI. Thank you.

Mr. Samuel, in regard to strengthening 201, which I believe is something that must be done, there are many factors that are considered. Could you put on the record the importance of threat of injury in this concept?

Mr. SAMUEL. Yes, although I am not sure what has to be said that the term itself is—it is self-explanatory. The threat of injury can be just as serious, as you well know, as injury itself.

If I could go beyond that and repeat, very briefly, my comments in my opening remarks, that 201 is vital in order to preserve our whole open trading system and that the particular aspect of the H.R. 1950 which I think should be given strong consideration by this subcommittee is the option to have a modernization clause which could be either threat of injury or injury itself.

This, I think, would be one way of assuring that an injury which is suffering or about to suffer severe damage or disruption could

come out of a period of relief able to meet the future, the needs of its own industry as well as the needs of the country.

Mr. GUARINI. And also, in 201, we also suggested to lower the substantial injury definition to injury? Is that correct?

Mr. SAMUEL. I think we have asked to lower it to the level of GATT. To put it at the same level as GATT.

Mr. GUARINI. Which would make it more plausible for people who are injured to prove their case with probative evidence.

Mr. SAMUEL. Yes, I have never understood why it is that the United States has to force our industries and our workers to suffer greater damage than workers and industries in other countries.

Mr. GUARINI. And make it harder for them to even prove it in a court of law.

Mr. SAMUEL. Before we provide them with some kind of relief.

Mr. GUARINI. Could you comment, Mr. Wolff—on the threat of injury and the importance of it, and the factors that are to be considered under the H.R. 1950?

Mr. WOLFF. There are several aspects to that, Congressman Guarini. Where foreign markets are closed, there is diversion to our market and that, in our view and in the view of the authors of H.R. 1950, should be a substantial consideration in threat of injury determinations. Factors such as foreign industrial targeting should also be included.

Where there is a concerted effort to increase the international competitiveness of an industry, it is likely—it is foreseeable—that there will be injury to our market and to our industry. And that, in fact, has happened repeatedly—in machine tools, in semiconducters, in a number of areas where there have been identifiable programs years in advance of any product showing up on our shore. It was very clear that there would be injury to our industries.

And under our law, currently as interpreted by the U.S. International Trade Commission, the Commissioners are looking for current lost jobs, current depressed prices, current closure of plants. We think—and H.R. 1950 would have them look at—what is very clearly on the horizon and about to happen.

Mr. GUARINI. Now, these factors are not considered in the committee draft, are they? As I understand, they are left out?

Mr. WOLFF. They are not specifically addressed in the outline that we have seen today.

Mr. GUARINI. Thank you.

And just lastly, Mr. Meagher, I assume you were very displeased and unhappy with the tax reform laws, as passed by the House of Representatives. What do you think should be done in regard to boosting American trade, as to how our tax laws should address this problem?

Mr. MEAGHER. I think we need to go to a tax system that taxes consumption.

Mr. GUARINI. I may agree with you in principle, but in the practical politics of it, it does not seem to be in the cards right now.

Mr. MEAGHER. It seems to me that the tax laws ought to deal more effectively with our comparative cost of capital. It ought to deal with the cost of regulatory schemes in the Tax Code. Pension

costs are a very major cost to American industry. I'm not saying do away with them at all, but we need to have some relief there.

In general what we need to do, it seems to me, is to look at the tax laws as well as other laws from the standpoint of how they affect our competitiveness. We have not done that. H.R. 3838 doesn't do that. It simply avoids that question for other reasons. We have historically done that.

Our tax law was grounded in a fortress America situation where domestic manufacturers produced goods for domestic consumers. It didn't take into account the cost of production overseas. Until we do that, whether it is in this tax law or a succeeding tax law, and I suspect there will be succeeding tax laws, we are going to be in effect forcing our manufacturing offshore.

Very simply what happens under H.R. 3838 is it is in many instances much more economical to move your plant and equipment to a foreign country where you get very significant write-offs, produce products for importation into the United States and pay a 36- or 37-percent tax rate here. America becomes a tax haven for its own companies.

If we are going to do that, we are going to end up as the chairman of the board of Sony has said, with hollow corporations in this country, where manufacturing is not done here, it is done elsewhere and we will be the coordinators of worldwide organizations that have manufacturing done at the absolutely cheapest place, raw materials purchased from the cheapest place and the result is going to be that our standard of living is at stake because our workers simply are not going to make the money to be able to buy the goods and services that they have historically bought.

What other countries are saying to us, is that that will be a mistake not only for America but for them. If your market isn't a viable market, it isn't a viable market for anybody. It won't be a viable market for the Koreans or for the South Africans or for the Americans.

At some point we are going to start to look at these questions from a competitiveness standpoint and I think we will come to some different conclusions than we have come to. These processes are never quick or easy. I think there is enough awareness now of the need to do that that we will begin.

Mr. GUARINI. Do you think our tax laws are responsible for the sourcing out or do you think it is because of the work ethic and the cheaper labor the companies find in other countries?

Mr. MEAGHER. I think it is a combination of things. I don't think you can pin it on the tax laws. I don't think you can pin it on labor costs, for example. Labor costs in this country are coming down. The trade movement has been very responsible in that respect. We have just concluded an agreement with the United Steel Workers over the weekend that is a very, very landmark agreement, under which they are going to have reduction in wages and they are going to get equity in our company. There is going to be great incentives for them and us to do better.

I don't think it is any one factor, Congressman. As I testified, I think there is a series of factors that are not necessarily trade related, tax, antitrust, a whole series of factors. We simply haven't

looked at these from the standpoint of competitiveness because we didn't have to.

That is not to put on glasses and say hindsight is 20/20 and blame anybody or point any fingers. If I did, I would blame myself because I was part of that when I worked here.

I think we need to look afresh at the issues that really end up going into the cost of production here versus other places. I think that will lead us to some different conclusions than we have reached in the past.

Mr. GUARINI. I will just ask you one last question. You mentioned consumption. Of course, that would help our capital formation and the capital savings in our country and a value added tax is what most of our trading partners go by and live on.

How big a part of the equation is the ability to be able to deduct from the border the value-added tax that our trading partners have? How much of an edge does it give them in competitiveness in your opinion?

Mr. MEAGHER. I suppose it gives them an edge based on the percent of the tax.

Mr. GUARINI. In Sweden, it was 23.7 percent, which is the value added tax, in a very high social program state. That is what Sweden deducts at their border because that is their value-added tax.

Mr. MEAGHER. They deduct that. That is 23 percent. Something else occurs. What else occurs is their social insurance program is funded by that value-added tax. It is not funded primarily by the corporation that is also going to deduct the 23 percent on exports. They get a double whammy there. The cost of their social insurance program in Sweden, which is a very social insurance oriented society, as I understand it, that has to be added to that.

In contrast, in America, we split the cost of social insurance between the Government and the corporation. If you are in the 50-percent tax bracket, you can deduct it. Some of us can't deduct it, not all of it, so that adds to the cost. There is nothing wrong with that. There is nothing wrong with having a social insurance system. We need one. But we do need the kind that we have?

There is that variance occasioned as an ancillary result from the differences in the two systems. That simply changes the cost of production to us versus the Swedish manufacturer.

Mr. GUARINI. Is this a major factor in our trade problems?

Mr. MEAGHER. Yes; it is.

Mr. GUARINI. Thank you. I want to thank the entire panel.

Chairman GIBBONS. I hate to interrupt. The big chairman is sending me word that he has a meeting over in 208. This little chairman is going to have to agree with him.

Mr. GUARINI. Thank you very much, Mr. Chairman.

Chairman GIBBONS. I want to thank the panel for all that they have done. Perhaps we had better have you back a little later on when you have had a chance to review the work a little more and so that other members can come in and ask questions.

We will adjourn until 1:30, at which time we will convene again.

Mr. MILLIAN. We certainly thank you for letting us be here. We want to state clearly that if you enacted the outline of your proposals today, this would be a great step forward. We would like to

work with your committee and with your staff to tighten it up if we can.

Chairman GIBBONS. Thank you. We will be working with you. I have gotten a lot of ideas just sitting here listening this morning.

[Whereupon, at 12:05 p.m., the subcommittee was recessed, to reconvene at 1:30 p.m.]

AFTERNOON SESSION

Mr. PEASE [presiding]. The hearing of the Trade Subcommittee will resume.

Our witnesses for this panel are Mr. Eugene Milosh, president of the American Association of Exporters and Importers, and Ernest Johnston, international representative, Phillips Petroleum Co. for the National Foreign Trade Council.

Would you step forward, please?

[The witnesses comply.]

Mr. PEASE. Mr. Milosh, you may proceed at your leisure.

STATEMENT OF EUGENE J. MILOSH, PRESIDENT, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS, ACCOMPANIED BY HAROLD PAUL LUKS, WASHINGTON REPRESENTATIVE

Mr. MILOSH. Mr. Chairman and members of the subcommittee, on behalf of the 1,100 member companies of the American Association of Exporters and Importers, I want to take this opportunity to first list a series of eight principles and benchmarks by which the subcommittee should judge any amendments to the trade laws of the United States, and second to evaluate certain legislative proposals against these benchmarks, which are described in the subcommittee's discussion draft of the trade reform bill.

AAEI specifically seeks to represent exporters and importers and strives to ensure that our trade laws acknowledge the interests of both groups. We would appreciate that the full text of our prepared statement be included in the hearing record.

Today, I am accompanied by Harold Paul Luks, AAEI's Washington representative.

There are benchmarks to judge amendments to the trade laws. Smoot-Hawley protectionist is easy to identify. It conjures images of a fortress America through which goods neither enter or leave. But protectionism in the guise of technical changes, bureaucratic reorganization, or clarifications of existing standards can be difficult to identify and often requires the patience of a scribe to fully assess. Legally it is very complex.

AAEI looks forward to cooperating to ensure that any trade legislation acknowledges and protects the interests of exporters and importers. In this light, any trade bill should consider the following factors:

One, to authorize the President to enter into negotiations to improve the multilateral trading system by expanding the scope of the GATT, the Tokyo round MTN codes, and improving related consultation and dispute settlement procedures.

Two, reject proposals requiring unilateral actions which violate specific provisions of existing international agreements or contravene their purposes and objectives.

Three, preserve the fundamental distinction between laws which provide import relief from fairly traded imports and those laws designed to remedy unfair trade practices. The term "unfair" should be reserved only for those actions which are inconsistent with internationally agreed to standards.

Four, oppose measures to transfer or diminish under existing trade laws the President's existing decisionmaking and discretionary authorities to ensure that competing domestic interests are reconciled with the national economic interest, to enable the President to negotiate the opening of foreign markets to U.S. goods, services, and investment, and to settle by negotiation countervailing and dumping cases.

Five, recognize that import restraints can result in damaging effects on individual consumers, exporting industries which incorporate foreign-origin component parts, and by restricting competition, impair seriously the international competitiveness of domestic industries.

Six, support legislative proposals which increase the certainty, transparency, and fairness of the trade laws and regulations which are at risk of rivaling the Tax Code in complexity.

Seven, defend the principle of most-favored-nation treatment and nondiscrimination as the foundation of world trade.

And eight, acknowledge that exports and imports contribute to increasing our standard of living, and that trade-related programs, such as adjustment assistance or harbor dredging, should be funded by general revenues and not by surcharges or user fees imposed on importers.

Before evaluating a number of proposals in the discussion draft against these benchmarks, I must reiterate a longstanding position of AAEI, and that is that a piecemeal approach to reforming the trade laws will make them more complex and difficult to administer and also less predictable. In contrast, a comprehensive bipartisan and broadbased review would likely yield benefits for exporters and importers.

As far as the trade negotiation authority, the Tokyo round MTN structure was largely the creation of the United States. If we had not cajoled and pressured other trading nations to stick with the Tokyo round, it would have been relegated to a historical footnote. A new trade round to address the many issues identified in the subcommittee's draft requires two things from Congress, both of which are inseparable.

First, a broad grant of negotiating authority to the President, and second the rejection by Congress of amendments to the trade laws which violate the GATT or the MTN codes.

I would like to comment on section 301, Mr. Chairman. The success of section 301 is not measured by the number of retaliatory actions, but rather by the success of negotiations to open foreign markets. As drafted, 301 provides the President with maximum flexibility to achieve this goal. I would like to read from the Trade Reform Act of 1974, and this was the report by the Committee on Finance:

In describing 301, it states: "The committee does not intend that this retaliation authority be a dead letter. Foreign trading partners should know that we are willing to do business with them on a fair

and free basis. But if they insist on maintaining unfair advantages, swift and certain retaliation against their commerce will occur."

There are two specific provisions that we object to. One is targeting.

AAEI opposes measures to expand the scope of 301 to include foreign government policies which are properly the scope of the countervailing duty laws. For example, using 301 to retaliate against targeting, as unilaterally defined by the United States, ignores the CVD statute. It contravenes the subsidies code, invites mirror-image legislation, and would likely trigger retaliation.

The second pertains to—objection pertains to Presidential discretion. As we interpret 301, the trade policy could be summed up as follows: Let's act unilaterally and see if the GATT finds our actions illegal. Furthermore, to combine within USTR the authority to initiate cases, implement retaliation, and to defend our actions in the GATT is akin to combining the role of judge and prosecutor in one office. In my association, it is difficult enough to reconcile the differences between exporters and importers. If you throw in the domestic industries and other groups and factions, that's quite a job for anyone.

The next area of concerns for us are amendments to section 201, because the President is in the best position to judge what is in the best economic interest of the Nation.

Another area is reduction of the causation standard.

Still another change which we oppose are special provisions for short life cycle products—that is, perishable commodities, because as a matter of general policy, AAEI does not believe there are any circumstances which warrant provisional import relief unless and until there exists a reasonable indication of serious injury or unfair trade practices.

Related to section 201 is the auctioning of import quotas. We oppose strongly the auctioning of quotas under section 201. For the same reasons, we testified against the auctioning of import licenses with respect to the textile quota bill, H.R. 1562. It would create a costly administrative nightmare. It would disrupt traditional distribution patterns and be discriminatory by guaranteeing a monopoly to larger importers and limit sources of merchandise for retailers. It would result in the creation of a secondary market in which unused quota shares would be sold at a premium, and it would raise the question, whether as a revenue raising measure, it would be compatible with GATT.

Mr. Chairman, with respect to the natural resource pricing, we believe it is a matter for international negotiation. It is a two-edged sword, and it would have an effect on the plow, the agricultural sector of our economy.

We have reviewed most of the countervailing duty and antidumping amendments and urge that no new amendments be enacted at this time relating to persistent subsidy and dumping. The principal proposals call for the elimination of the preliminary injury test by the ITC where during the year preceding the filing of a petition, the ITC made a preliminary or final determination with respect to the same product from a different country.

This proposal is designed to harass importers by encouraging the filing of frivolous cases and restricting the ITC's ability to termi-

nate its investigation. Moreover, the proposal is unnecessary, since the Trade and Tariff Act of 1984 provides for the cumulation of imports of like products from all countries under investigation.

With regard to nonmarket economies, the proposals regarding this issue are no less arbitrary than current practice. The antidumping and countervailing duty laws cannot operate effectively when market forces do not dictate price or government pricing policies are virtually impossible to determine.

We also opposed subsidies and dumping in third country markets. Our reasons are included in our prepared statement, as well as our views on the telecommunications portion.

In conclusion, there are several measures which are not in the draft bill, but which the subcommittee should oppose. One is the repeal of the deductibility for tariff payments, which is part of Senator Packwood's tax bill.

Two, all import surcharge proposals and measures which result in similar effects and, three, user fees, which in effect impose an additional financial burden on importers for the privilege of paying Customs duties. This is analogous to charging a taxpayer a fee to file your tax return.

In conclusion, U.S. trade policy is at a turning point because of domestic reactions to the trade deficit and the impending round of multilateral trade negotiations. One the one hand, this subcommittee has the ability to steer a course toward trade expansion by establishing the basis for the trade round and by providing the President with the necessary tools to conduct that negotiation.

On the other hand, unilateral trade legislation which increases protectionism and violates our international obligations will preclude a new trade round. The chances of international trade becoming a Darwinian jungle where many industries lose their competitiveness and ultimately fall by the wayside will be greatly increased.

The choice rests with this subcommittee and your colleagues who have jurisdiction over our trade laws and policy.

Thank you, and I would be happy to answer—Mr. Luks and I would be happy to answer any questions.

[The prepared statement follows:]

Statement of Eugene J. Mikosh, President
The American Association of Exporters and Importers
Proposals to Amend the Trade Laws of the United States
March 20,1986

Introduction

Mr. Chairman and Members of the Subcommittee, on behalf of the 1,100 members companies of the American Association of Exporters and Importers ("AAEI") I want to take this opportunity to:

First, list a series of principles and benchmarks by which the Subcommittee should judge any amendments to the trade laws of the United States; and,

Second, evaluate certain legislative proposals against these benchmarks which are described in the Subcommittee's "Discussion Draft" of a trade reform bill.

Mr. Chairman, AAEI specifically seeks to represent exporters and importers and strives to ensure that our trade laws acknowledge the interests of both groups. We would appreciate that the full text of our prepared statement be included in the hearing record. Today, I am accompanied by Harold Paul Luke, AAEI's Washington Representative.

Benchmarks to Judge Amendments to the Trade Laws

Smoot-Hawley protectionist is easy to identify. It conjures images of a fortress America through which goods

neither enter or leave. But protectionism in the guise technical changes, bureaucratic reorganization, or clarifications of existing standards can be difficult to identify and often requires the patience of a scribe to fully assess.

AAEI looks forward to cooperating with you and your staffs to ensure that any trade legislation Acknowledges and protects the interests of exporters and importers. In any trade bill, this Subcommittee should:

1. Authorize the President to enter into negotiations to improve the multilateral trading system by expanding the scope of the GATT, the Tokyo Round MTN Codes, and improving related consultation and dispute settlement procedures.

2. Reject proposals requiring unilateral actions which violate specific provisions of existing international agreements, or contravene their purposes and objectives.

3. Preserve the fundamental distinction between laws which provide import relief from "fairly" trade imports and those laws designed to remedy "unfair" trade practices. The term "unfair" should be reserved only for those actions which are inconsistent with internationally agreed to standards.

4. Oppose measures to transfer or diminish under existing trade laws the President's existing decision-

making and discretionary authorities (a) to ensure that competing domestic interests are reconciled with the national economic interest, (b) to enable the President to negotiate the opening of foreign markets to U.S. goods, services and investment, and (c) to settle by negotiation countervailing and dumping cases.

5. Recognize that import restraints can result in damaging effects on individual consumers, exporting industries which incorporate foreign-origin component parts, and, by restricting competition, impair seriously the international competitiveness of domestic industries.

6. Support legislative proposals which increase the certainty, transparency and fairness of the trade laws and regulations, which are at risk of rivaling the tax code in complexity.

7. Defend the principle of most-favored-nation treatment and non-discrimination as the foundation of world trade.

8. Acknowledge that exports and imports contribute to increasing our standard of living and that trade-related programs (e.g. adjustment assistance or harbor dredging), should be funded by general revenues -- and not by surcharges or user fees imposed on importers.

Mr. Chairman, before evaluating a number of proposals in the "Discussion Draft" against these benchmarks, I must

reiterate a long-standing position of AAEI. A piecemeal approach to "reforming" the trade laws will make them more complex and difficult to administer, and less predictable. In contrast, a comprehensive, bipartisan, and broad-based review would likely yield benefits for exporters and importers.

Trade Negotiation Authority

The Tokyo Round MTN structure was largely the creation of the United States. If we had not cajoled and pressured other trading nations to stick with the Tokyo Round, it would have been relegated to a historical footnote. A new trade round, to address the many issues identified in Subcommittee's "Draft", requires two things from Congress, both of which are inseparable.

First, a broad grant of negotiating authority to the President; and,

Second, the rejection by Congress of amendments to the trade laws which violate the GATT or the MTN Codes.

Section 301

Mr. Chairman, the success of section 301 is not measured by the number of retaliatory actions, but rather by the success of negotiations to open foreign markets. As drafted, 301 provides the President with maximum flexibility to achieve this goal.

Targeting

AAEI opposes measures to expand the scope of 301 to include foreign government policies which are properly the scope of the countervailing duty ("CVD") law. For example, using 301 to retaliate against "targeting", as unilaterally defined by the United States: ignores the CVD statute; contravenes the Subsidies Code; invites mirror-image legislation; and, would likely trigger retaliation.

GATT Consideration & Presidential Discretion

As we interpret 301 in the "Discussion Draft", U.S. trade policy could be summed up as follows: Lets act unilaterally and see if the GATT finds our actions "illegal." Furthermore, to combine within USTR the authority to initiate cases, implement retaliation, and to defend our actions in the GATT is akin to combining the role of judge and prosecutor in one office.

Section 201

Industrial Policy & Presidential Discretion

AEEI does not believe that additional legislation is necessary for domestic industries and workers to form advisory committees or boards to prepare strategies for industrial competitiveness. Indeed, the present law provides that the industry seeking relief describe in its petition to the ITC the specific purposes for which relief is sought, including adjustment to new conditions of competition.

We question whether the Subcommittee is actually prepared to convert the International Trade Commission

("ITC") into a de facto national industrial policy/economic revitalization board while, at the same time, stripping away the President's ability assess the impact of trade protection on the national economic interest. We agree with the statement in the Report on the Trade Act of 1974 that 201 "is not intended to protect industries which fail to help themselves become more competitive...".

Reduction of the Causation Standard

Moreover, the "Draft" eliminates from the consideration of a "substantial cause of serious injury" general recessionary conditions. Therefore, whenever such conditions develop, we can expect a long queue of domestic industries seeking, and probably obtaining under the proposed changes, import relief. Of course, the price would be borne by U.S. consumers and exporters.

Short Life Cycle Products (Perishable Commodities)

As a matter of general policy, AAEI does not believe there are any circumstances which warrant provisional import relief unless and until there exists a reasonable indication of serious injury or unfair trade practices. This position is applicable to proposals authorizing provisional relief in the event of "critical circumstances" or perishable agricultural products.

In 201 cases, several proposals shift the burden of proof regarding injury from the domestic industry to the foreign exporter and jurisdiction for injury determinations

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from the ITC to the Department of Agriculture and the USTR. "Guilty until proven innocent" is fundamentally inconsistent with U.S. law and our international obligations. The same objections arise in considering the injection of critical circumstances determinations into 201 proceedings.

Auctioning of Import Quotas

We oppose the auctioning of quotas under section 201 for the same reasons we testified against the auctioning of import licenses with respect to the textile quota bill (H.R. 1562). It would:

(1) Create a costly administrative nightmare;

(2) Disrupt traditional distribution patterns and be discriminatory by guaranteeing a monopoly to larger importers and limit sources of merchandise for retailers;

(3) Result in the creation of a secondary market in which unused quota shares would be sold at a premium; and,

(4) Raise questions whether, as a revenue raising measure, it was compatible with the GATT.

Natural Resource Pricing

We believe that natural resource pricing is a legitimate concern for specific U.S. industries and Congress. However, we have serious reservations that proposed amendments to the CVD statute would be inconsistent with the Subsidies Code and the GATT. This issue should be addressed internationally. The CVD amendments reported to the full

Committee are precisely the kind of unilateral action which could endanger a new trade round and invite substantial retaliation against U.S. exports, particularly in agriculture. Only after natural resource pricing standards have been achieved through multilateral negotiations would the U.S. have a basis for enforcement actions. .

Countervailing & Antidumping Amendments ("AD")

We have reviewed most of the CVD and AD amendments. AAEI strongly urges that no new amendments to the CVD and AD laws be enacted at this time.

Persistent Subsidy and Dumping

The principal proposals call for the elimination of the preliminary injury test by the ITC where during the year preceding the filing of a petition the ITC made a preliminary or final determination with respect to the same product from a different country.

This proposal is designed to harass importers by encouraging the filing of frivolous cases and restricting the ITC's ability to terminate its investigation. Moreover, the proposal is unnecessary since the Trade and Tariff Act of 1984 provides for the "cumulation" of imports of like products from all countries under investigation.

Non-Market Economies ("NMEs")

The proposals regarding this issue are no less arbitrary than current practice. The AD and CVD laws can not operate effectively when market forces do not dictate price

or government pricing policies are virtually impossible to determine.

It seems appropriate, therefore, to consider revisions to section 406 of the Trade Act of 1974 (and possibly other trade remedy laws) and to attempt to decouple remedies for relief from NME imports from market concepts. In addition, proposals are anticompetitive which preclude an NME from being considered under the trade laws as the lowest-priced exporter to the U.S.

Subsidies and Dumping in 3rd Country Markets

The use of unfair methods to capture the third country markets of U.S. exporters is actionable under 301. The CVD and AD laws are not appropriate remedies for such practices and their application would be contrary to the Antidumping and Subsidies Codes.

Telecommunications

AAEI endorses the goal of liberalizing international trade in telecommunications products and equipment. We are concerned, however, that a telecommunications bill could severely restrict the President's ability to negotiate the opening of foreign markets by mandating retaliation if bilateral agreements are not concluded by a specific date. We also question whether U.S. export potential and actual market share are accurate determinants of the "openness" of a foreign market and that whether a market is open or closed should take into account the presence of U.S. subsidiaries

and affiliates.

Other Measures

On many occasions, you have heard testimony which describes the irrevocable connection between the domestic and international sectors of the American economy. The trade deficit and the relative value of the dollar is a function of domestic economic policy. However, there are a number of measures which this Subcommittee could recommend to enhance U.S. export performance. I'll cite just one: Improvements to the Export Administration Act which would assist our most competitive industries to sell their goods overseas.

In contrast, there are several measures which this Subcommittee should oppose because they will harm one sector of the trading community and impose burdensome and onerous taxes on all Americans.

(1) Repeal of the deductibility for tariff payments

(2) All import surcharge proposals and measures which result in similar effects, and,

(3) User fees, which in effect impose an additional financial burden on importers for the privilege of paying customs duties. This is analogous to charging a taxpayer a fee to file your tax return.

Conclusion

U.S. trade policy is at a turning point because of domestic reactions to the trade deficit and the impending round of multilateral trade negotiations. On the one hand, this Subcommittee has the ability to steer a course toward trade expansion by establishing the basis for the trade round and by providing the President with the necessary tools to conduct that negotiation. On the other hand, unilateral trade legislation which increases protectionism and violates our international obligations will preclude a new trade round. The chances of international trade becoming a Darwinian jungle, where many industries lose their competitiveness and ultimately fall by the way side, will be greatly increased. The choice rests with this Subcommittee and your colleagues who have jurisdiction over our trade laws and policy.

Mr. PEASE. Thank you very much, Mr. Milosh.

Next we will hear from Mr. Johnston. Would you like to proceed?

STATEMENT OF ERNEST B. JOHNSTON, PRINCIPAL INTERNATIONAL REPRESENTATIVE, PHILLIPS PETROLEUM CO., ON BEHALF OF THE NATIONAL FOREIGN TRADE COUNCIL, ACCOMPANIED BY LOUIS LIEBOWITZ, CHAIRMAN, WORKING GROUP ON TRADE REMEDY LEGISLATION; AND PAUL MURPHY, VICE PRESIDENT FOR GOVERNMENT AFFAIRS

Mr. JOHNSTON. Mr. Chairman, my name is Ernest Johnston. I work for the Phillips Petroleum Co. I am here today to present the views of the National Foreign Trade Council on trade legislation.

I have with me Louis Liebowitz of the firm of Arent, Fox, who is chairman of the council's working group on trade remedy legislation, and Paul Murphy, who is the vice president of the Council for Government Affairs.

The National Foreign Trade Council is an association of more than 550 U.S. companies which account for over two-thirds of U.S. exports.

Though the dollar has recently fallen, U.S. companies engaged in trade are still living through hard times.

The dramatic increase in imports has led some to seek major changes in law to provide greater protection to industry against foreign competition.

The council supports vigorous enforcement of our laws against dumping, subsidies, and unfair measures. These laws are consistent with international practice. Although we support the trade remedy laws substantially in their current form, we believe some changes are in order. My written statement contains some specific suggestions. Unfortunately, I have to apologize that you do not yet have it. We didn't realize we were going to appear quite so fast. We promise to get it to you by tomorrow.

We caution against undue reliance on laws that restrict imports since these do not by themselves foster competitiveness. We ask you to remember that import restrictions impose significant costs on the U.S. economy and on exporters in particular. They contribute to inflation and they act as a tax on the most competitive part of the American economy by pushing up the dollar and raising input costs for all of those who sell abroad.

As we see it, the focus of congressional action should not be to build more restrictions into our trade laws, although there is some cleaning up to be done, but to aim toward a reduction in the dollar, toward programs to improve U.S. competitiveness, toward a major effort to reduce foreign barriers to exports, and toward strengthening the rules of the world trading system.

Let me review briefly some of the specific proposals to amend the current laws. Up until recently, section 301 has not been used extensively. The council supports self initiated investigations. It opposes the automatic transfer of decisions from the President to the U.S. Trade Representative but does encourage the President to delegate to him responsibility for cases of a straight forward nature.

Section 301 should remain a broad discretionary statute to permit the President adequate flexibility in negotiations.

Several of the current proposals address the problem of foreign government industrial policy. We have strong reservations concerning unilateral legislation that characterizes other's industrial policies as unfair trading practices before there is an international consensus. We believe that the appropriate forum for addressing the issue of industrial policy is the GATT, or bilateral negotiations.

We support proposals that would add to the remedy options available to the President, such as the negotiation of international agreements to offset or eliminate specific acts and the withdrawal of beneficiary countries or eligible article status under the generalized system of preferences. We would hope that agreements of this sort would broaden trade opportunities.

We support the current time limits on investigations but endorse reasonable time limits for Presidential disposition of 301 cases. We dislike requiring the concurrence of a petitioner in the settlement of a case by agreement.

The National Foreign Trade Council supports amending section 337 of the Tariff Act to give more effective protection to intellectual property. Infringement itself should constitute injury. We support 301 action to enforce U.S. intellectual property rights in foreign markets.

The council favors discouragement of persistent dumping and subsidies and believes that in certain circumstances a recent injury finding should make unnecessary subsequent preliminary determinations. We do not believe that investigations should have shorter time fuses. Current limits are already short for thorough investigations. Some changes are needed to amend the current treatment of nonmarket economies.

Section 201 has been generally effective. The International Trade Commission has found injury in more than half the cases in the last decade. The injury standard is reasonable. The President should make the last decision, and he should have discretion. Relief should be temporary, digressive, by tariffs rather than quotas, and granted only when it will lead to competitiveness.

Some expansion of discretionary remedies such as antitrust relaxation may be appropriate. We support a modest adjustment assistance program that would focus on retraining rather than unemployment compensation. We are dubious that proposals for temporary relief in critical circumstances are warranted.

We support proposals to expand section 201 remedies, such as antitrust exemptions and multilateral negotiations to address global surplus of diversion.

The council believes that a new round of negotiations is necessary and that the Congress should supply the authority. GATT work already underway needs completion in the field of counterfeit goods and the safeguards code. The subsidies code needs better definition and broader coverage. Negotiations should extend the GATT into services. GATT dispute settlement mechanisms need to be made more judicial in order to enforce agreements.

For these goals, the administration needs legislation granting maximum flexibility. We don't think that the administration should be asked to pay a price for legislative authority if that price

means the acceptance of constraints, preconditions or requirements that would defeat future agreements.

Legislation should grant authority in the tariff field and extend the fast track procedure for nontariff negotiations. The authority should provide for full consultation with Congress and industry.

In short, Mr. Chairman, the council believes that you are engaged in a worthwhile endeavor. Changes need to be made. We ask you to bear in mind that the main purpose of legislation should be to expand trade and consequently increase the rate of economic growth in this country. For this, the President does need some sticks. We urge that these sticks not be put into some sort of automatic robot like motion by legislation.

I thank you for the chance to present the council's views.

[The prepared statement follows:]

SUMMARY OF TESTIMONY

NATIONAL FOREIGN TRADE COUNCIL

WAYS AND MEANS TRADE SUBCOMMITTEE

March 20, 1986

The statement of the National Foreign Trade Council support vigorous enforcement of current U.S. trade laws, particularly those dealing with unfair trade practices.

The Council also calls for appropriate changes in the current law to make these laws work more effectively but it believes that major amendments are not needed and could jeapordize exports and economic growth.

The NFTC statement emphasizes the importance of preserving the distinction between fair and unfair competition. Fair competition, addressed primarily by Section 201 of the Trade Act, is beneficial to the U.S. economy as a whole. Import relief should be limited to those instances where the industry can become competitive and where the benefits of relief outweigh the costs. Changes in trade law to require automatic relief or to change the injury standard used by the ITC would lead to a significantly more protectionist policy.

In addition to rigorous enforcement of laws dealing with unfair trade, these laws should be examined for possible improvements to ensure that they function as intended. The Council favors, for example, adding reasonable time limits for the resolution of disputes under Section 301 of the Trade Act. The Council also favors revision of Section 337 to eliminate the injury standard for violations of intellectual property rights.

However, the Council cautions against placing undue reliance on these laws. Import restrictions even where justified, impose very significant costs on the U.S. economy and are only marginally responsible for the deterioration of the U.S. competitive position.

The Council recommends that the focus of any omnibus trade legislation be on trade promotion not restriction. Negotiating authority for a new multilateral trade round is of paramount importance. Also, Congress can play an important role in restoring the competitiveness of U.S. exporters by making competitiveness a reference point for legislation on tax reform, and regulatory legislation.

TESTIMONY OF

ERNEST B. JOHNSTON

PRINCIPAL INTERNATIONAL REPRESENTATIVE,

PHILLIPS PETROLEUM COMPANY

ON BEHALF OF THE

NATIONAL FOREIGN TRADE COUNCIL

BEFORE THE

HOUSE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

MARCH 20, 1986

The National Foreign Trade Council, an association of over 550 U.S. companies which account for the major share of U.S. exports, welcomes this opportunity to present its views on issues of trade law reform of interest to the Subcommittee.

Even while the overall economy and U.S. employment continue to expand, intensified import competition has created difficult adjustment programs for many sectors of our economy. This is particularly true for traditional manufacturing industries, but the problem extends as well to some of the newer high technology industries.

The dramatic increase in import competition, fair and unfair, over the past several years, has led some to seek major changes in U.S. trade laws to restrict imports.

The National Foreign Trade Council supports vigorous enforcement of existing trade remedy laws, i.e., the antidumping and countervailing duty statutes, Section 301 of the Trade Act, and other laws which permit import curbs as a means to combat unfair trade practices of our foreign competitors or surges in fairly traded imports which cause major dislocations in a particular sector. These U.S. laws are consistent with an international consensus reflected in the General Agreement on Tariffs and Trade on what constitues unfair trading practices and under what circumstances safeguard actions are appropriate.

We believe that these laws should be reviewed to see if improvements can be made in terms of efficiency--particularly our intellectual property laws. But we support the trade remedy laws substantially in their present form because with proper enforcement they impose lawful and reasonable sanctions on foreign competitors engaged in unfair practices, and they provide U.S. producers with time to adapt to new competitive conditions. At the same time, these laws are intended to preserve a necessary balance between the rights of U.S. petitioners and other national economic or political interests.

We caution, however, against placing undue reliance on these laws. Restrictions on imports do not in themselves foster competitiveness or constitute a program for sustained economic growth.

Indeed, import restrictions, whether imposed through tariffs, quotas, or voluntary restraint agreements, impose very significant costs on U.S. exporters and the economy in general:

They act as a tax on the most competitive parts of the American economy by pushing up the value of the dollar and by raising input costs which exporters have difficulty in passing on in a highly competitive world market.

They provoke imitative or retaliatory measures by our trading partners, impeding U.S. exports.

They contribute to inflation by increasing the costs of imports and domestic products which compete with imports.

Finally, they reduce the flow of imports from developing countries, thereby lessening the ability of those countries to purchase U.S. exports--and in the case of heavily indebted countries--to repay their debts.

It is illusory to think that we can protect our economy against imports without substantial economic costs to the most productive and competitive sectors of our economy.

Nonetheless problems of illegal and unacceptable trade practices or of severe distortions caused by imports require adequate trade laws as an integral part of U.S. foreign economic policy.

However, the focus of Congressional legislation should not be building more restrictions into our trade laws, which with few exceptions are working as intended, but on trade expansion. In addition to the suggested improvements in U.S. trade law, we think that an effective U.S. response to foreign competition should consist of these elements: first, a reduction in the value of the dollar; second, policies and programs to enhance the competitiveness of U.S. industry; third, a major effort by the

U.S. to reduce foreign and domestic barriers to U.S. exports; fourth, action to strengthen the institutions and the rules of the international trading system for goods and services; fifth, action to induce the major industrialised countries to accelerate growth and absorb a greater share of world industrial output.

The Subcommittee has requested comments on several of the proposals for changing our trade remedy laws and on negotiating authority for a new round of multilateral trade talks. The following are our views:

I. Unfair Trade Practices

A. Amendments to Section 301

Section 301 of the Trade Act of 1974, as amended, provides authority and procedures for the enforcement of the U.S. rights under international trade agreements, and for responding to unreasonable, unjustifiable or discriminatory burdens on U.S. commerce. Proposed amendments before Congress generally would (1) require initiation of investigations by the U.S. Trade Representative under certain circumstances, (2) transfer authority to act from the President to the U.S. Trade Representative, (3) add to the law several examples of specific unfair or burdensome foreign practices, (4) increase the number of specifically authorized remedies to redress these practices, and (5) considerably shorten time limits for action, and require remedial action within a certain time after an affirmative determination.

Section 301 of the Trade Act currently invests the President with broad discretion to take (or not take) action to redress violations of trade agreements by other countries, and unfair practices which burden U.S. commerce. The authority has been little used until recently.

Specifically, the Council has the following comments concerning 301 amendments:

(1) Mandatory Initiation of Investigation

Under current law, the USTR is permitted, but not required, to initiate Section 301 investigations upon petition or on his own motion. The USTR must determine within 45 days after a petition is filed whether to initiate an investigation.

Some proposals would transform actions to respond to unfair practices of foreign governments under Section 301 from a tool of diplomacy to a ministerial act. If the USTR determined that an unfair trade partice existed, relief would be mandatory under a under a rigid time schedule.

The Council opposes such proposals. The U.S. government would find it difficult to prevent retaliation against U.S. sectors not involved in a Section 301 investigation, in case our trading partner did not agree that its acts or practices violated agreements or were otherwise unfair, discriminatory, or unreasonably burdensome. Amendment of Section 301 in the manner suggested could turn each trade dispute raised by a domestic petitioner into a mandatory confrontation.

(2) Mandatory Retaliation

The Council opposes proposals which would require action by the USTR to enforce all rights and completely offset or eliminate all acts, policies and practices which were found to exist in a determination under Section 301. Such provisions provide no discretion to refrain from granting relief, a departure from current law and could force the U.S. to take action not in the best interest of the nation as a whole.

(3) Transfer of Authority

The Council opposes a statutory transfer of decision-making authority from the President to the U.S. Trade Representative in Section 301 cases. However, the Council encourages the President to delegate responsibility for cases of a straight-forward nature to the USTR, provided that the President retains control over the balancing of national interests.

The choice of remedies for unfair, restrictive or burdensome actions by our trading partners should remain a matter of discretion. The factors which must be considered in developing any appropriate remedy include effects on consumers, suppliers and customers of the affected industry, and the possible effects of any remedy on other sectors of the U.S. economy. The President alone is able to call on all the resources of government to weigh these factors.

(4) Specification of Practices that Violate Section 301

Under current law, a practice, to be actionable under Section 301, must be (a) inconsistent with a trade agreement, or (b) unreasonable, unjustifiable or discriminatory and burden or restrict U.S. commerce. Various proposals would expand this list to include acts that threaten to burden U.S. commerce, and would also specify certain acts or practices which are considered burdensome, for example: "Targeting," subsidization of exports that leads to displacement of U.S. trade in other foreign markets; and, diversion of trade to the United States due to import and export performance requirements or trade restraining agreements. There are also provisions to define as "unreasonable acts or practices" infant industry protection and the failure to protect against anticompetitive practices. Moreover, these proposals would provide that the President must act against such practices.

The Council opposes these proposals. The President now has the authority to react to these practices under Section 301, but he should not be required automatically to do so. Nor is it necessary to describe in detail each practice actionable under this statute. Section 301 should remain a broad discretionary statute to permit the President adequate flexibility in international negotiations. Unfair practices that directly involve the U.S. market, such as dumping and subsidization, can also be dealt with under specialized statutes. Practices that involve agreements between two foreign countries or in which the effect on the U.S. market is indirect are not amenable to automatic solutions. Trading principles in these areas should evolve through bilateral and multilateral negotiation.

The fundamental difficulty with many of the proposals before Congress that address the problem of foreign government industrial policy is that they go beyond the international consensus as to what constitutes an unfair practice under internationally accepted trade rules. While sympathizing strongly with U.S. producers confronted with a variety of foreign government interventions which aid their export industries at our expense, we have strong reservations concerning unilateral legislation which characterizes industrial policies of our trading partners as unfair trade practices.

We recognize that progress will be slow, but these issues must be addressed by U.S. trade policy. The NFTC believes that the appropriate forum to address the issue of foreign industrial policies aimed at export promotion is in the GATT, or in bilateral negotiations because an international consensus on the fairness or unfairness of such practices is needed if effective action is to be taken. The Council has recommended that the GATT Subsidies Code be revised during the forthcoming multilateral trade negotiations to address new forms of subsidization and unfair government intervention in trade. In the meantime, our government and U.S. industry should utilize existing rules, laws and institutions to combat these practices.

(4) Expansion of the List of Section 301 Remedies

Various proposals would add to the remedy options available to the President, including negotiation of internatiional agreements to offset or eliminate the offending act or practice, and the withdrawal of beneficiary country or "eligible article" status under the Generalized System of Preferences ("GSP").

The Council supports these proposals. Agreements which broaden trading opportunities , such as by opening export markets, are entirely consistent with the Council's objectives. Agreements should not, however, lead to cartelization of the market for the product concerned.

Removal of beneficiary country or eligible product status under GSP is an appropriate tool for maintaining adherence to

international trading rules. However, such withdrawal should remain discretionary.

(5) Time Limits and Settlement Cases

The Council supports the current time limits on investigations, but endorses the idea of adding reasonable time limits for a Presidential disposition of 301 cases.

Current statutory deadlines for the phases of an investigation are reasonable, and do not appear burdensome to petitioners. The Council opposes shortening them.

Under current laws, the President is required to take action within 21 days after receiving a recommendation from the USTR. However, such action could take the form of negotiations with the affected trading partner, and in previous cases these negotiations have dragged on for many years. The Council opposes efforts to make agreements within certain time limits mandatory under Section 301. But the Council would support a requirement that the President take some final action within a specified time period, and be required to explain publicly, if applicable, why agreements have not been reached regarding unfair or burdensome acts or practices, or why he is not taking retaliatory action in the absense of an agreement.

The Council is also opposed to a provision which would require the concurrence of the Section 301 petitioner or the affected domestic industry in any settlement of a case by international agreement. The settlement of a case by agreement should not be subject to veto by one class of affected persons (the industry producing a similar product).

B. Intellectual Property - Section 337

The NFTC favors amending Section 337 of the Tariff Act of 1930 to give more effective protection to intellectual property. Intellectual property infringement severely injures U.S. industries. Such infringement, of itself, should constitute injury for the purposes of Section 337. The Council also favors elimination of the requirement that a U.S. domestic industry be efficiently and economically operated. This change would help to reduce the complexity and expense of ITC proceedings and would protect the rights of incipient industries.

In addition, the Council favors vigorous action by the USTR under Section 301 of the Trade Act, as amended, to enforce respect for U.S. intellectual property rights in foreign markets.

C. Antidumping and Countervailing Duty Laws

1. Persistent Dumping and Subsidy Practices

The Council supports efforts to discourage persistent dumping and subsidies. One proposal in Congress provides that if the ITC has reached an affirmative preliminary or final determination of injury in an antidumping or subsidy case with the past year, then the ITC should not be required to make a preliminary injury determination in a current countervailing duty or antidumping investigation of the same product.

While supporting the intent of this proposal, the Council has some concerns about how this particular formulation would work. Trading partners might object to what they would see as a denial of a preliminary injury test that is their right under the GATT. Also, safeguards should be developed, where practical and appropriate, against harassing or frivolous petitions which could disrupt trade. The Council would be happy to work with the Committee on this issue.

2. Shortening of Time Limits

The Council opposes shortening the time periods for countervailing duty or antidumping investigations. Over the years, these time limits have already been shortened considerably. Present time limits are already too short to permit thorough investigation of many subsidy complaints.

(3) Non-Market Economies

The Council supports changes in U.S. law that would eliminate Department of Commerce use of "constructed value" to determine foreign market value in cases involving dumping by state-controlled economies. This procedure has proved too costly and time consuming. We favor a system which would be flexible enough to permit the country alleged to be dumping to prove that it was indeed a lowest-cost producer of a product. The Council would oppose formulas which would lead rigidly to unfair findings based on average product costs.

(4) Diversionary Dumping

Legislative measures have been advocated which would deal with situations where a foreign manufacturer of a product subject to an antidumping investigation has incorporated components or materials which have themselves been the subject of previous antidumping determinations.

These proposals are less objectionable than the "downstream dumping" proposals which they have replaced. However, the Council is unable to support them, because they go beyond current international understandings of practices which subject products

to antidumping duties. A "diversionary dumping" determination would base antidumping duties on previous findings which may not reflect the actual cost to the foreign producer of the product subject to investigation, and could make antidumping determinations subject to pricing practices entirely beyond the control of that foreign producer. A sensible solution to the problem of "diversionary dumping" must take account of these concerns.

II. Import Relief and Adjustment

Section 201 - General Principles

o. The critical distinction between fair and unfair competition should be preserved in U.S. law. Fair competition, which contributes to U.S. and worldwide economic growth, should be restricted only where it is a substantial cause of serious injury to a domestic industry and where temporary relief will foster industry adjustment.

o. Section 201 in its present form has been generally effective in its operation, despite disagreements over particular cases. Since the standards were last eased in 1974, the ITC has found import-induced injury in 32 of the 55 cases in which petitions for escape clause relief have been filed; some form of import relief has been afforded the domestic industry in 13 of these cases, and in other cases (e.g. steel) the domestic industry has gained import relief by related measures.

o. Presidential decision-making and discretion in 201 cases should be preserved, since the President is in the best position to balance the frequently competing interests in these cases and to make an overall determination of the national economic interest.

o. Where relief is appropriate in 201 cases, it should be temporary and gradually phased out.

o. Where import relief is appropriate, it should be in the form of tariffs rather than quotas.

o. Import relief should be granted only where it will lead to renewed competitiveness of the injured industry.

o. Where it is unrealistic to expect an industry, or part thereof, to achieve a competitive position, relief should be in the form of adjustment assistance to enable workers to shift to more productive enterprise.

o. Some expansion of the discretionary remedies available to the President in 201 cases might be appropriate (e.g. antitrust relaxation) so long as it does not contribute to cartelization in the industry.

Specific Proposals to Change Section 201 of the Trade Act of 1974

1. Restriction of Presidential Discretion

Various proposals in congress provide that the petitioning industry can agree to have an industry adjustment plan developed by an industry-labor-government panel. If industry and labor commit to the plan, and if the plan is approved by the ITC, then the President must impose the ITC remedy or a remedy substantially equivalent to it. The President can avoid this obligation only if Congress votes to permit him to do otherwise. The relief can be modified or terminated if the industry does not live up to the plan.

The NFTC opposes these proposals. By dramatically limiting the President's discretion, they would effectively remove any consideration of consumer interests, overall American economic interests, and the interests of industries that could be harmed by the compensation the U.S. must offer, or against which foreign countries might retaliate. The requirement that an ITC-approved adjustment plan must be agreed to does not compensate for this elimination of balanced decision-making. Moreover, many such plans would be objectionable in themselves because they would require excessive government intervention in the marketplace.

2. Restriction of ITC Discretion

One proposal would require the ITC to recommend import restrictions to the President if the ITC makes the requisite injury finding. Under current law the ITC is entitled either to recommend import restrictions or to recommend adjustment assistance.

The NFTC opposes this proposal. The ITC should retain the flexibility to recommend adjustment assistance in lieu of import restrictions. When combined with the proposal discussed in paragraph 1, above, it is clear that import restrictions are very likely to be imposed in any case in which the ITC makes an affirmative injury finding. Neither the ITC nor the President would be given discretion to balance other factors against the harm being suffered by the domestic industry.

3. Causality

Several legislative proposals have recommended a reduction in the causation standard of Section 201 from substantial cause (i.e., no more important cause, as interprested by the ITC) to "a" cause.

The Council opposes such a change. A standard which would require a showing only that imports were one cause of a domestic industry's distress, in effect, would be a correlation test rather than a causation test; wherever there was serious injury,

or a threat thereof, to a domestic industry and the existence of increased imports (absolutely or relatively), there would be recommended import relief. Even without the relative "automaticity" of relief in other proposed changes, this would result in massive import restrictions during periods of economic slowdown or recession.

4. Trade Adjustment Assistance

The Federal Trade Adjustment Assistance Program which has functioned in large part as a system to provide supplemental unemployment benefits has, overall, not successfully addressed the problem of displaced workers. U.S. corporations are responding to the challenge through extensive employee training programs and through corporate contributions to private education. For its part, government, federal, state and local, must enlarge support for education and worker training if U.S. industry is to possess the human resources to compete in world markets. We support a targeted adjustment assistance program which would focus on retraining rather than unemployment compensation.

The Council has not taken a position on recent proposals to provide expedited trade adjustment assistance automatically to the petitioning industry upon an affirmative injury finding by the ITC.

5. Temporary Relief in Critical Circumstances

A current legislative proposal provides that the President must impose temporary import relief if he finds that "critical circumstances" exist. Critical circumstances are defined as a significant increase in imports (actual or relative to domestic production) over a short period of time, where a delay in the imposition of relief would cause damage to the industry that would be difficult to remedy. At the present time there is no temporary relief available under Section 201.

While we recognize that the product life cycle is shrinking in some parts of the economy, this proposal raises some concern. Section 201 cases already run on a fairly tight time schedule. The President must make his decision within eight months after the case is initiated. Moreover, there are no obvious examples in which an industry was so grievously harmed during the pendency of a Section 201 case that the ultimate relief was less effective than it might have been otherwise. Second, the definition of critical circumstances is loose. If low profits are enough to qualify, then critical circumstances would be present in almost any case in which the ITC eventually makes an affirmative determination. Any such proposal should at the least establish a standard of the type of damage that would be considered difficult to remedy at the end of the case. Third, by placing the critical circumstances decision with the President, who is not equipped to

gather evidence and has no trained staff to evaluate it, the critical circumstances determination will be a political one based on a very poorly developed record. Fourth, in any 201 case, there is a need to balance the interests of importers and consuming industries in the decision. In the courts, preliminary relief is granted only if the judge is convinced it is warranted after balancing the effects on all parties. The law should be no less fair in international trade proceedings.

6. Expansion of Section 201 Remedies

Proposals exist to expand the available remedies under Section 201 to include (1) accelerated antidumping or countervailing duty cases in which an ITC injury finding is not required; (2) antitrust exemptions; and (3) multi-lateral negotiations to address global oversupply or diversion problems.

The NFTC supports these proposals. None of these remedies are any more restrictive than those currently available, and in some situations they could be useful tools for the President. However, we urge that the legislative history make clear that it is not the intent of Congress to encourage the formation of cartels.

III. Trade Negotiating Authority

In the next round of multilateral trade negotiations the United States will be pressing our trading partners to reduce non-tariff barriers and other practices which stifle international trade. The support of Congress is essential if our negotiators at these multilateral trade talks are to have the authority and the flexibility needed to lead the world toward a more open international trading system.

Recommendations

1. We believe the Congress should give the Administration maximum flexibility to carry out multilateral trade negotiations. New negotiations are an essential step to arrest deterioration in the multilateral system and to regain the momentum toward further trade liberalization. To preserve the international trading system, to restore confidence in the GATT, and to better equip it to deal with an increasingly complex array of trade problems, GATT rules and procedures must be strengthened and the scope of their coverage extended.

2. We oppose any legislation which imposes constraints, preconditions or requirements inimical to the conclusion of liberalizing and GATT-strengthening negotiations, or modifications in U.S. trade laws.

3. Legislative action should be in the form of general authority to negotiate with the greatest possible tariff-cutting power and extension of the "fast track" procedure for implementation of the results of non-tariff negotiations.

4. The authority should leave open the possibility of bringing back self-contained agreements prior to completion of a single package. It should have at least a five-year duration, with the possibility of continuing negotiations in some particularly difficult areas (e.g., specific agreements or commitments under a services umbrella).

5. Such authority should provide for full consultation with Congress and with the private sector.

Mr. PEASE. Thank you very much, Mr. Johnston. Mr. Crane, do you have questions?

Mr. CRANE. I want to first express appreciation to you gentlemen for coming here to testify.

I was reviewing the business section of today's Washington Post. There is an article about the debt crisis said to be hurting the U.S. economy and perhaps you have read the article already. It is in line with something that has been a concern of mine in this whole debate on how we deal with our deficit in international trade.

I just came from a luncheon with Under Secretary Bruce Smart. The Under Secretary said, and I questioned him on it afterwards, that if there were absolutely no barriers to trade anywhere in the world, that everybody was practicing free trade, that would not cut our deficit in our trade balance more than 10 to 20 percent max. There are a lot of other components in this whole problem.

The one covered in this article I referred to deals with the Third World debt. I raised the question with the panel we had this morning. The funding for the IMF, which I voted against, an additional $8.6 million a year or two ago, was designed to provide relief to many of our big banks who had over extended themselves in granting loans to under developed countries especially.

The thing that was disturbing to me at the time of that debate was testimony that we had heard from at least one former Secretary of the Treasury that if we extended that additional funding to the IMF, that was like going from a 3-meter board to a 30-meter board. As he said, when you go off the 30-meter board, you make a lot bigger splash when you hit and you create bigger waves. He was very much opposed to granting that additional funding and insisted the banks should eat their losses, let them refinance. A lot of them were decent loans.

The particularly worrisome thing is that the IMF can only grant loans to governments, not to private ventures. In granting those loans to the governments, they must accept certain terms. The terms involved, among other things, in the case of Thailand, that Thailand virtually cut off any imports, it must seek to aggressively expand its exports and the IMF even pressured them into a debauchery of their currency, so as to give them a better trading advantage with countries with sound currencies such as the United States.

Among the variety of unfortunate consequences of that sort of thing, namely putting tariff barriers up to the entry of American goods, the destruction of their currency obviously created a degree of inflation in Thailand that almost triggered an overthrow of the government. Thailand is a staunch ally of the United States and has stood with us through several conflicts in the middle of this 20th century. I am assuming they asserted similar pressures on a lot of other countries.

In this article, Paula Stern, the head of the International Trade Commission, was pointing out that U.S. exports to seven of the largest debtor nations, namely Brazil, Mexico, Venezuela, the Philippines, Chile, and Nigeria, dropped from $34 billion in 1981 to $18 billion by 1985.

I am sure again that this is one of the consequences of the IMF policies in trying to bail those countries out to save the banks at

the expense, it is estimated, of 1.6 million jobs here in the United States and some industries hanging on the ropes.

In short, what we have is a preferential way of handling the banks' problems but it has come at the expense of a lot of businesses in this country and a lot of jobs, too.

My own predilection would be to abolish the IMF which the previous panel thought was perhaps a bit extreme. It seems to me they have contributed as much as any other single ingredient to the whole problem we are suffering. The estimates are here that one-third of our total trade imbalance is a direct consequence of trying to deal with all of that Third World debt.

Based upon Under Secretary Smart's comments at lunch, if we had totally free trade existing in the United States, that would only impact that deficit 10 to 20 percent max and if fully one-third of it is a direct consequence of the IMF and its policies, that is one place we ought to look for trade remedies.

Another concern and Under Secretary Smart reinforced this point, was our lack of productivity. The fact of the matter is we are not as productive as we should be. This involves tax policy. The Japanese, for example, do not tax interest, dividends and capital gains. I cannot be persuaded that our punishment of interest, dividends and capital gains by contrast does not severely impact on the cost of capital and making us a first rate competitive nation.

In addition to that, there are other problems, if you simply wanted to address trade imbalances which I raised this morning, and we should be selling Alaskan oil. The Japanese are willing to buy our Alaskan oil. That could have a big impact on the trade imbalance with Japan. Another issue is raw cut timber from public lands. Why have we protected certain aspects of domestic American industries going back to the 1960's? If you want to solve a trade imbalance, if that is the paramount concern, those things would do a great deal to redress that problem.

I agree that to the degree you have nations that are engaged in restrictive practices, you have to exert pressures. Frankly, at our seminar down at Destin, FL last weekend, Fred Bergsten was there and raised a very interesting point. He said imagine if we reversed the $150 billion trade deficit and we had a positive balance next year. The other side to the coin is the loss of $150 billion of markets here in the United States to the various people that we trade with. We had been in the forefront of advocating free trade and trying to persuade countries that protectionism is bad policy and it is injurious to their economies and to their consumers. He sounded the alarm that if we get our books in balance on this trade picture, if we were to do that overnight, you are going to see a great hue and cry for protectionism from all our trading partners.

What it suggests is we have to move with dispatch to take advantage of any GATT negotiations to try to get trading partners to get set in cement on the desirability of free trade before we get into that new wave of world protectionism, not emanating from here at home but from foreign trading partners who are suffering because they see their balances shifting around.

I would just like to elicit comments from you on those various points.

Mr. JOHNSTON. That is a pretty big menu. It seems to me you sort of brought in the whole question of economics not only for our country but for the world.

I think I agree with you, in essence, in what I see as the major drift of what you are saying, which is that the reasons for our trade deficit are not to be found exclusively in trading conditions. We have a lot of things in our own economy where we are promoting, if you will, a kind of antitrade situation.

If you look at a country that manages through its tax laws to elicit savings of about 5 percent of the gross national product from the people and at the same time you have a government which is taking 5 percent in the form of deficit and still you have an industry that wants to have investment, you have really an unsupportable situation. The way we got out of it and lost our pants in the process, was we kept the interest rate so high that we brought in the money that allowed us to invest here but that drove up the rate of our currency in such a way that we find ourselves with a deficit of the proportions that we have.

It seems to me without trying to get into subjects that are way beyond the National Foreign Trade Council, when you look at the treatment of equity in debt, in the tax structure, you are getting into something which is very much related to this. The question of how we treat the exemption of all kinds of expenditures including interest on our personal income tax returns, these all contribute.

I think I do disagree in regard to the IMF. I think if you look at the situation in a country which in essence has given out of money and is about to go bankrupt, the question is if the IMF lends them money, then can the country get into a position where it can improve its economy. If the IMF does not lend any money, then I think you will find the situation of semi-default where it is highly likely that U.S. exports would drop even more than they do in the statement Ms. Stern made. It is true, we lost a lot in the developing countries between 1981 and 1983. The main reason we lost on our export markets was they didn't have the money to pay. The fact that there were IMF programs there meant they had a little bit more money than they would have had.

I do not know a thing about the Thai example, I am sorry to say.

Mr. CRANE. Let me amplify on that one point. There is an adjacent article on this front page about the IMF Director questioning the Baker proposal. What Secretary Baker was urging was that through commercial banks and IMF loans, we extend something of the magnitude of $20 billion more to all these debtor countries so they will have the foreign exchange to buy American goods. I mean to the degree that this depletes IMF funds and considering the conditions IMF has traditionally imposed on countries, I don't see that as any solution. It seems to me they are just aggravating a bad situation that as I indicated, based on the figures, has contributed to one-third of the total trade imbalance. Going back to Secretary Smart's comments, if you had absolute free trade, it would only impact 10 to 20 percent on that trade deficit. These guys have to be big time culprits in the problem.

Sure, the banks love it. I can understand their position. They are hanging on by their fingernails and I guess the 20 biggest banks in this country are technically bankrupt. They are on the most trou-

bled list, and will be broke unless they continue to get these infusions. That means we are going to have to raise the ante yet again in terms of our contribution to the IMF to be able to finance the sort of thing that is being debated right now.

Mr. MILOSH. Mr. Crane, I would only like to make a comment, which is in agreement with the feelings from the NFTC, and that is that you have an international problem, and LDC problem, and a good bit of that, as I understand it, is a question of interest rates because one percentage point interest rate in all the loans outstanding by the LDC countries makes a very huge impact on their position of liability. So the interest rate has a good deal to do with it, and obviously, we also wish to keep the doors open for their ability to export because that is the way they will repay those loans eventually. That is the hope.

I also agree that we should look at the international situation and look at the domestic situation independently in the sense that our ability to export is a domestic situation. We have had capital flows coming our way. One may ask what we have been doing with these capital flows to make the United States more competitive. I think that is a valid question.

Mr. CRANE. If you will yield, there is another interesting article. I mean the front page is just full of good stuff today. Eximbank makes first domestic sale loan. Now, this sounded like a pretty intelligent thing to me. It was to Allis Chalmers, Hydro, Inc., for a power-generating installation on the Allegheny River in western Pennsylvania. They were in competition, apparently, with a Brazilian firm for the contract, and the Brazilian firm—and Brazil, I think, is No. 1, aren't they, in terms of debtor nations? They are subsidizing the interest charged to secure that contract, to get it under real competitive interest rates.

The Eximbank made their first domestic loan at 5 percent to Allis Chalmers to secure that contract because of the game the Brazilians are playing.

But how can the Brazilians afford to be subsidizing interest rates like that for business projects, trying to capture markets here in the United States, when the United States is shoveling money out of the IMF to bail out the Brazilian Government and, presumably, the Brazilian economy. It just seems to me that we don't have a coherent policy, and the coherent policy involves a great deal more than focusing on some of these symptoms of unfair trade practices.

That, to me, is probably the least consequential portion of the whole problem. There are many other components. In fact, as defined by our faculty at the seminar, our budget deficit is the biggest cause of the trade deficit, the enormous debt that we have here at home; then taxes, I think they put second on the list, before you even get to these unfair trading practices.

I, frankly, am concerned that we will overreact if we are not careful. We could come up with a piece of legislation that will aggravate some of the problems that are kind of symptomatic of something much more serious that is wrong with our policy in this country. I don't think, frankly, that that has been put into a broad enough perspective in trying to guarantee that we get a robust, growth-oriented, export-oriented American economy on the track again.

Mr. LUKS. You were addressing in your initial remarks the dissimilarity between the system of international trade and the system or international monetary relations. If things had gone differently in 1947 and in 1948 and the GATT had become a world trade organization and had established a formal link and relationship, as was hoped, with the Breton Woods agreement, we would have moved through the post-war period on similar tracks and monetary policy and trade policy would have sought to reconcile themselves to one another.

But institutionally, internationally, they are separate. Domestically they are separate, and in fact, I think there is some interagency rivalry every once in a while to try to determine which policy should be pursued one over the other. That is, I think, one of the reasons why a new trade round is so very important. It is part of the selling exercise on the part of the United States to convince advanced countries, advanced developing countries and the so-called NIC's, the newly industrializing countries, of the importance now of joining together to address these issues, many of which have been before the international community for four decades.

In thinking of the Tokyo Round, there is something called the unfinished business of dealing with the escape clause and counterfeit goods, violations of trademarks, but the unfinished business of the international economic agenda really goes back to World War II, to the end of World War II.

So the question now is how much longer can the United States delay and how much longer can the advanced industrialized countries delay coming to grips with these problems now. We are waiting for a day of reckoning over which no industrialized country will have much control, and that is why the negotiating authority in getting this round going as soon as possible is of such paramount importance.

Mr. CRANE. I couldn't agree with you more on that, and I think that is in line with Fred Bergsten's comments about there is a window of opportunity right now, and if we can't lock everybody in and hopefully get a consensus when we are the profoundly injured party vis-a-vis most of our trading partners, once that situation starts to turn around, you are never going to be able to get them to a negotiating table to expand the arena of free trade.

I want to thank you all for your testimony.

Mr. PEASE. Thank you, Mr. Crane.

I too would like to thank our witnesses. I have a couple of questions.

Am I pronouncing your name correctly, Mr. Milosh?

Mr. MILOSH. That's correct.

Mr. CRANE. Mr. Milosh, you gave us eight principles or standards against which trade legislation ought to be judged. No. 3 was to preserve the distinction between fairly traded and unfair trade practices. You say the term "unfair" should be reserved only for those actions which are inconsistent with the internationally agreed-to standards.

There are a lot of actions by our trading partners that we are worried about now as being unfair. I could mention targeting, the services area, some subsidies in agriculture, intellectual property rights, investment, none of which are very adequately covered cur-

rently by international agreements. The general thinking is that if we would get into a new GATT round, it is going to be 4 or 5 years before we finish it.

Are you suggesting that we ought not to try to deal with those kinds of unfair trading practices until we get something pinned down in the GATT?

Mr. MILOSH. Mr. Pease, I would suggest that we approach these problems, and within the compatibility of current understandings, to find some solutions. There obviously will be some abuses, but that doesn't mean we should throw away the entire GATT structure, and certainly for one of the largest trading countries, we should try as much as possible to comply with these GATT principles.

The GATT is more akin to a religion. The more believers you have, the more strength you will have. But it is not meant for short-term gratifications, and that is the danger, that interests may look for instant solutions and gratification, and that is not the case. In the field of international economics, I would much prefer the principles of GATT to the teachings of Lenin.

Mr. PEASE. Then the bottom line is what do you propose that we tell people who are concerned about some of these unfair trading practices: that they should wait 4 or 5 years?

Mr. MILOSH. There are statutes on the books to deal with these questions. As we mentioned, 301 is certainly one avenue open to the President, and there are other statutes available to take actions.

Mr. LUKS. Mr. Pease, one of the issues that has come up is that very often the distinction between laws that are designed to open foreign markets become confused with laws to deal with other unfair trading practices. That is one of the themes that emerges in so many of the trade law amendments. If a country is restricting the ability of the United States to export, the President has a very broad grant of authority under 301. If they are subsidizing in third country markets, he can use 301. If they are subsidizing or dumping here, he can use the countervailing duty or the antidumping statute.

Each has a specific set of rules and procedures and standards, and it is awfully tough—and I don't think many countries can do it well and do it fairly—to preserve all of those distinctions. But one of the things that has occurred is when countries have treated us by blurring those distinctions or eliminating procedural protections, the United States squawks.

There was recently a case with a country with whom we have a great deal of similarity and common language in Asia, and the have pretty Koala bears, and they eliminated one of the procedural steps in a case by not making a finding for a preliminary injury, and we protested. Their law was changed to go back to what was the international standard.

So it comes back that if we want to change our laws to address certain specific practices and to achieve certain goals, we have to expect that others will do the same. That is where the problem is, and it is a conundrum.

Mr. PEASE. That, I believe, is the problem that our faculty members at the seminar last weekend referred to as a problem of emu-

lation; that if we stretch the GATT, we are likely to find our trading partners trying to do the same thing in the same area.

Mr. Milosh, you mentioned in section 301 that the success of section 301 should not be measured by the number of retaliatory actions but rather by the success of negotiations to open foreign markets. We have heard some other testimony recently of American firms that are distressed that so often the result of a 301 case is a negotiated settlement, that there is never any finding of whether there is or is not an unfair trade practice.

I think this is a little bit akin to plea bargaining. A person goes into court, is charged with something, the prosecutor plea bargains, and something happens. There is a resolution of the case but the people who are aggrieved don't feel very satisfied because there has never been any real finding of guilt as to the original charge.

Do you think there would be any desirability at all of making a finding of whether there is or is not an unfair trade practice even if the end result is not retaliation but a negotiated settlement of some kind?

Mr. MILOSH. Section 301 allows for a good deal of plea bargaining in the sense that it also considers other factors that the President has to weigh: foreign policy, national security, many other geopolitical concerns. So I think that there is a process where he must, or that is the right level to weigh these specific considerations.

Mr. JOHNSTON. Could I add a word on that, Mr. Pease?

Mr. PEASE. Surely.

Mr. JOHNSTON. It seems to me, in looking at this question of what is fair or unfair, it is a good idea to step back and sort of look at what the GATT was when it got started and how it has worked its way through to where it is now. The foundation of the GATT was a system of commitments on tariff levels by countries. They said I will not raise my tariff level above 10 percent on this item, 20 percent on that one, and I, by George, will keep it there. However, under certain circumstances I am allowed to alter that tariff.

Those circumstances were spelled out, and the people in the GATT felt they spelled them out fairly clearly: in the case of an injury, even if fair trade were going on, in the case of countervailing duty and in the case of dumping.

Now, the problem that we face is that there are things that are going on in the world that are new, and to us as we look at them, we say, well, we would prefer that that kind of thing not go on. But the main virtue of the GATT is—and in this I would answer categorically yes, there certainly is a great deal to be gained if you can get judgments on these things—to have people accept under what circumstance it is so clear that something is going on that you are then able to get out of the commitment to keep your tariff at a certain rate. I think that is one of the things we must seek the most.

You talked about plea bargaining. The problem with the GATT is we don't even have a court, in essence. It is a question of sovereignty, and you recognize it quite well. What we have got is an organization that is sort of gimcracked together with people recognizing that they have to make certain concessions, but how many people are going to come at the United States on an article 301 complaint in their country on the manufacturing clause? Do they think that is going to move the Congress of the United States?

That is the kind of political reality that we are dealing in, and sometimes I think we let our moral indignation carry us a little far because we are dealing with an organization where you do not have a court that can give a judgment, can impose its rule.

Mr. PEASE. I appreciate those comments, Mr. Johnston, because they really lead into a question I was going to ask you anyhow. In your testimony you said that you support the GATT as an arena for settling disputes, and I was going to raise the question of the obvious limitations of the GATT, some of which you have touched on.

Would you place a high priority in this next round of negotiations on strengthening the dispute resolution process within the GATT?

Mr. JOHNSTON. Absolutely. I don't know how much we can take, and I don't know how much other people can take, but I think that should absolutely be one of the prime goals that we are looking for in this next negotiation.

Mr. PEASE. Let me ask both of you the same question. I think Mr. Milosh said he was opposed to the auctioning of quotas under section 201. Did you take a position on the auctioning of quotas at all, Mr. Johnston?

Mr. JOHNSTON. No, sir. I don't think the National Foreign Trade Council really has a position on this. I guess I don't have quite the objection that Mr. Milosh has to it. I think you would have to determine a lot of things, whether you insisted that the auction system always be used. I think it is an experiment to try. It might be worth it.

Mr. PEASE. We were told over the weekend two things: One, that the root cause of our trade deficit is the Federal deficits we have been running up, the Federal fiscal deficits; and No. 2, that auctioning off all of the present quotas would bring in about $9 billion a year. We could reduce those deficits pretty substantially with $9 billion a year.

Mr. Milosh, would that change your attitude at all if we dedicated those auction quotas to deficit reduction?

Mr. MILOSH. I would have a great deal of difficulty because it is the administration of the quotas that is a major problem, and what it does to the trading business system. We have outlined in our testimony that the larger firms would certainly benefit by a quota system, a licensing system. It would be another step towards quota globalization. It just wouldn't have the desired effect.

So we would oppose that on the basis of its practicality. I think this has to be considered very seriously. We have had several directives coming through Customs which had the same kind of flavor: well, revenues will justify the action. But when you look at how it would be administered, what it would do to the flow of trade, then it becomes apparent it is not practical.

Mr. PEASE. Mr. Crane and I have a very important vote on now.

We are going to be exporting $100 billion to Nicaragua. [Laughter.]

Let me ask one quick question, before I dismiss this panel and then we will take a quick recess and come back for the final panel.

Given that the exchange rate of the yen to dollar is now ¥175 to $1, what would each of you predict that the bilateral trade deficit

with Japan will be for say 1986 and 1987? I am really looking for a trend, rather than absolute numbers. I will have to have this in about 1 minute.

Mr. JOHNSTON. Mr. Chairman, I am afraid that the figures are not going to change very much this year. We have got that J-curve that stretches for 18 months. I am hopeful we will get some results by September or October.

My feeling is that we will have a difference. I cannot give you a number.

Mr. PEASE. You think there will be——

Mr. JOHNSTON. I think the $50 billion will be down.

Mr. PEASE. You think it will be down?

Mr. JOHNSTON. Yes.

Mr. PEASE. In 1986?

Mr. JOHNSTON. No. In 1986, it takes us until October, I think, to get there. In 1987 I think we will see a change.

Mr. PEASE. Thank you.

Mr. Milosh.

Mr. MILOSH. I would hate to hazard a guess.

Mr. PEASE. Pardon me?

Mr. MILOSH. I would hate to hazard a guess, but I would say it is a question of what will happen to the price of goods that are now currently shipped from Japan. But I suspect that figures will not go any lower.

Mr. LUKS. Mr. Pease, two comments.

Mr. PEASE. You better make them quick.

Mr. LUKS. This is the time to sell, sell, sell and to eliminate some disincentives where U.S. products are particulary competitive in Japan, some high technology products. Maybe this committee will look at some of the Export Administration Act regulations in the coming weeks.

Mr. PEASE. OK. Thank you very much.

We appreciate your testimony.

We will take a recess of about 5 minutes and then we will resume.

[Recess.]

Mr. PEASE. Our final panel this afternoon is made up of representatives of the Business Roundtable, Glen Skovholt and Charles Levy, and also from the Emergency Committee for American Trade, Robert McNeil.

Would you please come to the platform.

Mr. Skovholt, would you proceed, please.

STATEMENT OF GLEN SKOVHOLT, DIRECTOR, FEDERAL GOVERNMENT RELATIONS, POLICY AND PROGRAMS, HONEYWELL, INC., ON BEHALF OF THE BUSINESS ROUNDTABLE AS CHAIRMAN, COORDINATING COMMITTEE, TASK FORCE ON INTERNATIONAL TRADE AND INVESTMENT, ACCOMPANIED BY CHARLES S. LEVY, COUNSEL, MAYER, BROWN & PLATT

Mr. SKOVHOLT. Mr. Chairman and members of the committee, my name is Glen Skovholt. I am the director of Federal Government relations, policy and programs for Honeywell and also serve

as chairman of the staff committee of the Business Roundtable's Task Force on International Trade and Investment.

As you perhaps know, Mr. Edson Spencer, chairman and chief executive officer of Honeywell, serves as chairman of the task force. It is in the capacity as chairman of the staff committee that I am here representing the Business Roundtable.

With me is Charles Levy, a partner in the law firm of Mayer, Brown & Platt, who is the legal counsel to our task force.

The Business Roundtable is an organization of approximately 200 chief executive officers of the largest corporations in the United States, ranging from manufacturing to services and covering all sectors of American commerce.

Let me say at the outset that the Business Roundtable believes that the Congress should adopt and enact trade legislation in 1986. In my comments, I will identify the areas that we believe should be included in legislation.

But before doing that, there are a couple of other things that I'd like to say to set the stage for our recommendations on trade legislation.

First of all, I would mention to you that the views of the Business Roundtable are contained in several documents that have been issued over the course of the last year. In April 1985, the Roundtable issued a statement recommending that the United States secure a commitment to embark on a new round of multilateral trade negotiations, and in that we recommended a negotiating process and a specific agenda for negotiations.

In October 1985, we issued a paper that makes recommendations for revising U.S. trade law, and it is that paper that I will be talking from in a couple of minutes.

But another important statement that we issued, that I'd like to call your attention to, is a statement issued by the Roundtable on September 11, 1985. This was shortly before the G–5 meeting and before the President's trade action program was announced, I would like to briefly cite what we said in that statement, because I think it sets the context for what ought to be done in the area of trade laws, and it suggests what the Business Roundtable believes should be done in order to deal with the trade crisis.

We have said that the trade crisis urgently calls for strong and creative leadership by the President and the Congress, and we urge the President to develop, announce, and implement a detailed and aggressive trade policy that responds to the trade crisis.

We also said that Congress needs to evaluate carefully trade proposals on the basis of facts, not emotions or perceptions, and we said that it is essential that the long-term implications of trade proposals be clearly understood.

We then went on to identify ten are as which ought to be the elements of a U.S. trade policy. I would like to list what they are.

First and foremost, we need to recognize that the trade deficit is linked to and impacted by budget, fiscal, and monetary policy. Significant further reductions in the budget deficit and enactment of tax policies that encourage investment and savings are necessary steps to restoring U.S. international competitiveness and reducing the trade deficit.

Two, make restoration of U.S. international competitiveness a top priority of this country and designate as a national goal the reduction of our current and trade account deficits. Well, how do we do that? We make suggestions in our next seven points.

Three, more aggressively use existing U.S. trade laws, including section 301 and other trade laws directed at unfair trade practices and more expeditiously resolve trade disputes.

Four, make better use of section 201, the escape clause, and utilize truly effective adjustment mechanism to enable U.S. industries to adjust more effectively to foreign competition.

Five, support a new round of multilateral trade negotiations. We point out that such trade negotiations should be a part of, and not a substitute for, a more aggressive trade policy.

Six, initiate parallel discussions with our major trading partners on economic and monetary issues affecting trade, including the exchange rate system.

Seven, give higher priority to the promotion of exports through the adoption of export control policies and export finance programs that respond to international competition.

In the final three points, we urge our Government to urge, in turn, our trading partners to do the following: one, foreign governments need to act more quickly to reduce and eliminate their own tariff and nontariff trade barriers. Japan should take more aggressive steps to increase imports and thereby reduce the bilateral trade imbalance.

Developed countries, most notably West Germany and Japan, should shift their domestic policies to encourage expansion of their domestic consumption and to achieve better balance in the international accounts.

Finally, newly industrialized countries, in recognition of their increased role in international trade, must also take prompt action to remove investment and trade barriers.

Those are the 10 points. I think it's worth reflecting on the fact that September 1985 really wasn't very long ago, and a lot has happened in terms of the way in which the Congress is looking at trade legislation, and the way in which our Government and other governments have been dealing with many of the issues that are identified here. Many of the recommendations that we were making to the administration are well underway.

That also, I think, points out that reforming the trade laws is not going to correct the trade imbalance by itself. It's one of many parts. But there are some things that can and should be done in the area of adopting trade legislation. They really fall into four areas.

I'd like to cite a statement that we issued back in October 1985. It was issued at that time to try and present to the Congress and the administration our ideas before the Congress began looking at trade legislation. So for that reason, there are some issues that you, today, are considering that the roundtable hasn't taken a position on and that we're now looking at. But this was an attempt to try to get in early and be somewhat proactive in terms of making suggestions. We are now be in the process of looking at some other ideas and responding to them as your hearings and markup continue.

The first of the suggestions—the first of the four areas concerns section 301 of the Trade Act of 1974, and there we recommend the following:

No. 1, transfer final authority to develop and implement actions under section 301 from the President to the U.S. Trade Representative.

Two, require the U.S. Trade Representative to retaliate in section 301 cases that involve the infringement of an international agreement, if negotiations and dispute resolution proceedings have not reduced or eliminated the unfair practice and (b) the international dispute resolution process has confirmed that the agreement has been infringed.

We provide an exception for that, which is that the President, after consulting with the affected domestic industry, could suspend the retaliatory action (1) for reasons of national security or (2) if the President determines that further negotiations are likely to result in the elimination of the unfair trade practice. If such negotiations are not successful within a reasonable period of time, Congress may under a fast track legislative procedure reimpose the suspended retaliation.

The third recommendation in the area of section 301 is for cases not covered by international agreements, and we would retain discretionary authority to retaliate in section 301 cases. If the USTR decides to retaliate, the President should have authority to override the USTR's decision, and if the President or USTR decides not to retaliate, a written report should be submitted to Congress.

The fourth recommendation is to establish time limits for implementing final decisions in section 301 cases and for completing international negotiations and dispute resolution procedures.

Our second area of recommendations concerns section 337, specifically relating to intellectual property.

The first recommendation is to eliminate the requirement that a domestic industry must show that it has suffered injury in section 337 intellectual property cases.

Second, to establish a technical assistance program to aid less developed countries in developing and implementing adequate intellectual property laws.

Third, because we think it's important that as you look as U.S. trade laws, you relate them to a new MTN, we restate our view that the negotiation of intellectual property issues should be a priority in the next MTN round.

Our third area of recommendations concerns section 201 of the Trade Act, the escape clause, and here let me say that the four recommendations that we make ought to be viewed, and were discussed in our task force as a package. The effort here is to emphasize adjustment, as opposed to protection of an industry.

Our recommendations are, No. 1, to require that increased imports be a cause rather than a substantial cause of injury to a domestic industry in order for it to qualify for relief under section 201.

Second, the President and the International Trade Commission should continue to emphasize the importance of adjustment to import competition, so adjustment assistance is an important part of the 201 process.

Three, broaden the scope of relief which the President can provide to an industry. Specifically, his relief options should include the following: (a) more effective trade adjustment assistance programs and (b) domestic policy measures. The statute should be broadened to provide for domestic policy measures which will contribute to an industry's ability to restore its competitiveness.

The fourth recommendation in this package is, if you do all of the above, also require the President to develop and implement a relief program if an affirmative finding is made by the International Trade Commission. But you would permit the President to determine the type, scope, and duration of relief which would best assist the industry to adjust to foreign competition.

Our final area concerns recommendations on multilateral negotiating authority. We believe the Congress should authorize the President to enter into GATT negotiations for a 10-year period, and we suggest a negotiating format that would include the following: Have simultaneous negotiations on the full agenda of issues with immediate action by the full GATT membership once consensus is reached in a negotiating group; establish checkpoints to evaluate whether negotiations are proceeding in an orderly and constructive fashion; bring individual agreements or groups of agreements to Congress for approval as GATT consensus is reached; and provide a fast track congressional approval procedure.

Our other recommendations with respect to the MTN are to authorize the President to open separate bilateral trade negotiations, to require that the President seek competitive opportunities for U.S. exports equivalent to those afforded in the U.S. market in each sector, to require that trade agreements presented for congressional approval be accompanied by a Presidential determination that the overall economy of the United States will benefit. Finally, we would suggest specific negotiating areas, and these would include safeguards, counterfeiting, subsidies, Government procurement standards, GATT framework issues, agricultural trade, North-South issues, investment issues, trade and services, intellectual property rights protection, international information flows, and state trading issues.

Those are, in summary form, the recommendations that we present for your consideration.

[The prepared statement follows:]

STATEMENT OF

BUSINESS ROUNDTABLE

STRENGTHENING UNITED STATES TRADE LAWS:

SUMMARY

The Business Roundtable has examined U.S. trade laws and the problems that exist with them. Based on that analysis and its general principles on trade issues, the Roundtable makes the following recommendations for changes in U.S. trade law:

A. RECOMMENDATIONS ON SECTION 301 OF THE TRADE ACT OF 1974

1. Transfer of authority. Transfer final authority to develop and implement actions under Section 301 from the President to the U.S. Trade Representative (USTR).

2. Infringement of International Agreement. Require the USTR to retaliate in Section 301 cases involving the infringement of an international agreement if:

   a. negotiations and dispute resolution proceedings have not reduced or eliminated the unfair practice; and

   b. the international dispute resolution process has confirmed that the agreement has been infringed.

   The form and scope of retaliation should be left to the USTR's discretion.

   c. The President, after consulting with the affected domestic industry, could suspend the retaliatory action (i) for reasons of national security or (ii) if the President determines that further negotiations are likely to result in the elimination of the unfair trade practice. If such negotiations are not successful within a reasonable period of time, Congress may, under a fast-track legislative procedure, reimpose the suspended retaliation.

3. Cases not covered by International Agreements. Retain discretionary authority to retaliate in Section 301 cases not covered by an international agreement and where negotiations have failed. If the USTR decides to retaliate, the President should have authority to override the USTR's decision. If the President or USTR decides not to retaliate, a written report should be submitted to Congress.

4. Time limits. Establish time limits for implementing final decisions in Section 301 cases and for completing international negotiations and dispute resolution proceedings.

Summary, cont.

B. RECOMMENDATIONS ON PROTECTION OF INTELLECTUAL PROPERTY

1. Injury determination. Eliminate the requirement that a domestic industry show that it has suffered injury in Section 337 intellectual property cases.

2. Technical assistance program. Establish a technical assistance program to aid less developed countries in developing and implementing adequate intellectual property laws.

3. International negotiations. Authorize the negotiation of intellectual property issues in the next round of multilateral trade negotiations.

C. RECOMMENDATIONS ON SECTION 201 OF THE TRADE ACT OF 1974

1. Cause of Injury. Require that increased imports be a "cause", not a "substantial cause", of injury to a domestic industry in order for it to qualify for relief under Section 201.

2. Adjustment. The President and the International Trade Commission should continue to emphasize the importance of adjustment to import competition in Section 201 cases.

3. Available relief. Broaden the scope of relief which the President can provide to an industry under Section 201. His relief options should include the following in addition to that presently authorized:

   a. more effective trade adjustment assistance programs, and

   b. domestic policy measures which will contribute to an industry's ability to restore its competitiveness.

4. Mandatory relief. Require the President to develop and implement a relief program if an affirmative finding is made by the International Trade Commission in an escape clause case. Permit the President to determine the type, scope and duration of relief which would best assist the industry to adjust to foreign competition.

Summary, cont.

D. RECOMMENDATIONS ON MULTILATERAL NEGOTIATING AUTHORITY

1. Negotiating authority. Authorize the President to enter into GATT negotiations for a ten-year period.

2. Negotiating format. Authorize the use of the following negotiating format:

   a. Simultaneous negotiations on the full agenda of issues.

   b. Immediate action by the full GATT membership once consensus is reached in a negotiating group.

   c. Checkpoints to evaluate whether the negotiations are proceeding in an orderly and constructive fashion.

   d. Individual agreements or groups of agreements to Congress for approval as GATT consensus is reached.

   e. Fast-track Congressional approval procedure for individual agreements.

3. Bilateral negotiating authority. Authorize the President to open separate bilateral trade negotiations.

4. Equivalent sectoral opportunities. Require that the President seek competitive opportunities for U.S. exports equivalent to those opportunities afforded in the U.S. market in each sector on which negotiations occur.

5. Economic benefit determination. Require that trade agreements presented for Congressional approval be accompanied by a Presidential determination that the overall U.S. economy will benefit.

6. Specific negotiating objectives. Specify that the agenda of a new MTN round should include, but not necessarily be limited to, the following items: Safeguards Code; Counterfeiting Code; Subsidies Code; Government Procurement Code; Standards Code; GATT Framework Issues; Agricultural Trade; North-South Issues; Investment Issues; Trade in Services; Intellectual Property Rights Protection; International Information Flows; and State Trading Issues.

TESTIMONY

Mr. Chairman, I am Glen Skovholt, Honeywell, Inc.'s Director of Federal Government Relations, Policy and Programs, and Chairman of the Coordinating Committee for the Business Roundtable Task Force on International Trade and Investment. Edson W. Spencer, the Chairman and Chief Executive Officer of Honeywell is Chairman of the Task Force. I am accompanied today by Charles S. Levy, a partner in the law firm of Mayer, Brown & Platt, who is counsel to the Business Roundtable Task Force on International Trade and Investment.

As Congress and the Administration consider major initiatives to deal with the continuing trade crisis, the Business Roundtable has developed a set of general principles to guide U.S. actions on trade and specific legislative recommendations which the Business Roundtable believes are necessary to implement these principles. These principles and legislative recommendations are the result of the Business Roundtable's deliberations over the last year.

GENERAL PRINCIPLES

U.S. trade policy should:

1. First and foremost, recognize that the trade deficit is linked to, and impacted by, budget, fiscal and monetary policy. Significant further reductions in the budget deficit and enactment of tax policies that encourage investment and savings are necessary steps to restoring U.S. international competitiveness and reducing the trade deficit.

2. Make restoration of U.S. international competitiveness a top priority and designate as a national goal the reduction of our current and trade account deficits.

3. More aggresively use existing U.S. trade laws, including Section 301 and the other trade laws directed at unfair trade practices, and more expeditiously resolve trade disputes.

4. Make better use of Section 201 (the "escape clause"), and utilize truly effective adjustment mechanisms, to enable U.S. industries to adjust more effectively to foreign competition.

5. Support a new round of multilateral trade negotiations. Such trade negotiations should be part

of, and not a substitute for, a more aggresive trade policy.

6. Initiate parallel discussions with our major trading partners on economic and monetary issues affecting trade, including the exchange rate system.

7. Give higher priority to the promotion of exports through the adoption of export control policies and export finance programs that respond to international competition.

The U.S. government should urge our trading partners to do the following:

8. Foreign governments need to act more quickly to reduce and eliminate their own tariff and non-tariff trade barriers. Japan should take more aggressive steps to increase imports and thereby reduce the bilateral trade imbalance.

9. Developed countries, most notably West Germany and Japan, should shift their domestic policies to encourage expansion of their domestic consumption and to achieve better balance in international accounts.

10. Newly industrialized countries, in recognition of their increased role in international trade, must also take prompt action to remove investment and trade barriers.

LEGISLATIVE RECOMMENDATIONS

Trade legislation is needed to implement a number of the preceeding trade policy principles. The following recommendations are designed to accomplish this.

SECTION 301 OF THE TRADE ACT OF 1974

Section 301 provides authority for the President to retaliate against unfair barriers to U.S. trade and investment.

It authorizes the President to enforce U.S. rights under international agreements. It also permits him to respond to foreign practices not covered by international agreements but which are unreasonable or discriminatory and restrict U.S. exports.

Definition of Problem

Section 301 can be an effective tool for reducing foreign

trade barriers to U.S. exports and investments. It has, however, seen only limited use since it was enacted as part of the Trade Act of 1974.

The President's unlimited discretion in determining whether to retaliate against unfair foreign practices permits political and diplomatic influences to take priority over trade considerations in Section 301 proceedings.

Section 301 cases have also tended to drag on for long periods of time, reducing the value of any settlements to U.S. industry.

Business Roundtable Recommendations

1. **TRANSFER OF AUTHORITY.** Transfer final authority to develop and implement actions under Section 301 from the President to the U.S. Trade Representative (USTR).

   A transfer to the USTR of final decision-making and retaliatory authority under Section 301 will give higher priority to emphasize U.S. economic interests. The USTR already has similar authority with respect to foreign export performance requirements under Section 307 of the Trade and Tariff Act of 1984.

2. **INFRINGEMENT OF INTERNATIONAL AGREEMENTS.** Require the USTR to retaliate in Section 301 cases involving the infringement of an international agreement if:

   a. negotiations and dispute resolution proceedings have not reduced or eliminated the unfair practice; and

   b. the international dispute resolution process has confirmed that the agreement has been infringed.

   The form and scope of retaliation should be left to the USTR's discretion.

   c. The President, after consulting with the affected domestic industry, could suspend the retaliatory action (i) for reasons of national security or (ii) if the President determines that further negotiations are likely to result in the elimination of the unfair trade practice. If such negotiations are not successful within a reasonable period of time, Congress may, under a fast-track legislative procedure, reimpose the suspended retaliation.

Once a violation of U.S. rights under an international agreement has been found by an independent U.S. fact finder and confirmed in international dispute resolution proceedings, mandatory retaliation is warranted if negotiations and dispute resolution proceedings do not result in timely elimination of the unfair practice. The President should, however, have the flexibility to suspend the retaliation for national security reasons or in the event further negotiations are likely to be successful. Congressional action through a fast-track legislative procedure to reinstate retaliation is necessary to keep pressure on the negotiations and to avoid unreasonable delays in taking action to eliminate unfair practices.

3. **CASES NOT COVERED BY INTERNATIONAL AGREEMENT.** Retain discretionary authority to retaliate in Section 301 cases not covered by an international agreement and where negotiations have failed. If the USTR decides to retaliate, the President should have authority to override the USTR's decision.

If the President or USTR decides not to retaliate, a written report should be submitted to Congress stating the basis for not retaliating and describing what other steps are being pursued to eliminate the unfair practice.

When Section 301 cases do not involve violations of trade agreements, flexibility should be preserved. The President and USTR should, however, be required to justify a decision not to retaliate and to explain what the United States intends to do to eliminate the unfair foreign practice.

4. **TIME LIMITS.** Establish time limits for implementing final decisions in Section 301 cases and for completing international negotiations and dispute resolution proceedings.

Time limits are already required for completing Section 301 investigations and for the President determining how to proceed. However, the investigation period may include unlimited time for dispute resolution proceedings under an international agreement and Presidental action may include open-ended negotiations.

Adding fixed deadlines for international dispute proceedings and negotiations, and for final retaliatory action in Section 301 cases will assure that relief, if

granted, will be timely and effective.

PROTECTION OF INTELLECTUAL PROPERTY

Definition of Problem

Section 337 of the Tariff Act of 1930 permits the prohibition of imports that infringe U.S. patents, copyrights or trademarks. To receive such relief, the U.S. industry must show injury, or the threat of injury, from those imports.

Protection of intellectual property rights is vital to a company's technological innovation and economic growth. In a number of cases, a U.S. industry has proved that imports are infringing its intellectual property rights but, due to the injury test, has been unable to obtain relief.

Current international agreements do not provide adequate protection and enforcement of intellectual property rights. Failure of foreign countries, particularly many of the newly industrialized countries, to grant or enforce adequate intellectual property rights is undermining the competitiveness of U.S. companies at home and abroad.

Business Roundtable Recommendations

1. **INJURY DETERMINATION.** Eliminate the requirement that a domestic industry show that it has suffered injury in Section 337 intellectual property cases.

   Eliminating the injury test from Section 337 in the case of intellectual property violations will encourage prosecution of commercial counterfeiting and other pirating of intellectual property rights. It will also reduce the cost and time required to obtain relief from such unfair trade practices. Import restrictions measures to enforce intellectual property rights are permitted under Article XX(d) of the GATT.

2. **TECHNICAL ASSISTANCE PROGRAM.** Establish a technical assistance program to aid less developed countries in developing and implementing adequate intellectual property laws.

   Such an assistance program will help provide less developed countries with the resources necessary for the design and implementation of a system of laws providing adequate protection of intellectual property rights.

3. **INTERNATIONAL NEGOTIATIONS.** Authorize the negotiation

of intellectual property issues in the next round of multilateral trade negotiations.

A multilateral agreement on intellectual property is necessary to assure adequate international protection and enforcement of intellectual property rights.

SECTION 201 OF THE TRADE ACT OF 1974

The "escape clause", Section 201 of the Trade Act of 1974, permits the President to grant temporary relief to domestic industries injured due to an increase in fairly traded imports. Such relief is permitted by Article XIX of the General Agreement on Tariffs and Trade. The temporary relief is intended to provide an opportunity to adjust to import competition.

The U.S. International Trade Commission recommends import relief to the President if it determines an industry has been seriously injured and imports were the substantial cause of the injury. The term "substantial cause" means a cause which is important and not less than any other cause.

The President makes the final decision on whether to limit imports or provide other relief. In determining whether to grant import relief the President must consider a number of factors including whether import relief will be effective, and the impact of relief on cusumers, competition, and international economic interests.

Defination of Problem

As currently used, Section 201 does not adequately encourage adjustment. In most cases, the President has overruled a recommendation that a U.S. industry be granted relief. In addition, the relief authorized by Section 201 is now limited principally to market restriction measures such as quotas and tariffs.

The Section 201 requirement that imports be a "substantial cause" of injury makes it almost impossible to obtain relief in a recession. This is due to the lack of agreed upon methodology for weighing the factors contributing to the injury.

The collective impact of these problems has been to create a lack of confidence in U.S. laws. This encourages the demand for trade solutions outside the GATT framework, such as voluntary restraint agreements and legislative quota protection.

The current adjustment assistance program, while intended to aid adjustment to import injury, is inadequately funded and too limited in scope. As a result, it has failed to promote meaningful adjustment.

Business Roundtable Recommendations

The following recommendations are offered by the Business Roundtable as an integrated package designed to promote adjustment to international competition.

1. **CAUSE OF INJURY.** Require that increased imports be a "cause", not a "substantial cause", of serious injury to a domestic industry in order for it to qualify for relief under Section 201.

   A change from "substantial cause" to "cause" in the statute would permit an industry to qualify for relief if imports are an important cause of serious injury, even though other causes may be of equal or greater importance: As noted earlier, the "substantial cause" standard is extremely difficult to administer fairly. Reducing the requirement to "cause" will make U.S. law consistent with international law and reduce the administrative problems inherent in the current administration of Section 201.

2. **ADJUSTMENT.** The President and the International Trade Commission should continue to emphasize the importance of adjustment to import competition in Section 201 cases.

   Adjustment to import competition is the principal purpose of the escape clause. Under current law, the Commission is required to investigate and report to the President on efforts made by firms and workers to compete more effectively with imports. The President is required to evaluate the effectiveness of import relief as a means to promote adjustment and the efforts being made or to be implemented by the industry to adjust to import competition. In order to carry out these responsibilities, Section 201 requires a petition for import relief to include a plan for adjustment.

3. **AVAILABLE RELIEF.** Broaden the scope of relief which the President can provide to an industry under Section 201. In addition to import restrictions now authorized under Section 201 (the imposition of duties or duty increases, tariff-rate quotas, quantitative

restrictions, and the negotiation of orderly marketing agreements), his relief options should include the following:

a. More effective trade adjustment assistance programs. Such adjustment assistance programs should emphasize restraining and assume that employees displaced from jobs for whatever reasons, including foreign competition are adequately assisted.

b. Expansion of the scope of economic relief to include domestic policy measures which will contribute to an industry's ability to restore its competitiveness. Such relief might include special tax benefits or relaxation of existing regulations and laws.

More flexibility in designing appropriate and cost effective approaches is essential to ease orderly adjustment to international competition. Without adjustment, no statutory or GATT justification exists for import relief when no unfair foreign practices are alleged to cause injury.

4. **MANDATORY RELIEF.** Require the President to develop and implement a relief program if an affirmative finding is made by the International Trade Commission in an escape clause case. Permit the President to determine the type, scope and duration of relief which would best assist the industry to adjust to foreign competition.

A requirement that some form of relief be granted when an industry succeeds in an escape clause case will increase the confidence of U.S. industry in our trade laws, and reduce the tendency to seek relief outside the framework of existing U.S. laws and the GATT. It will also assure that injured domestic industries and their employees will have an opportunity to adjust to international competition, while leaving the President considerable flexibility in designing the relief.

MULTILATERAL NEGOTIATING AUTHORITY

The General Agreement on Tariffs and Trade (GATT) is the principal multilateral agreement that sets rules for international trade. It was first signed in 1947 but has been updated through later rounds of negotiations.

Congress gives the President authority to participate in

these rounds of trade negotiations. Generally the grant of authority has included a listing of the U.S. goals for the negotiations and establishment of the procedure that will be used for Congressional approval of the results of the negotiations.

Definition of Problem

The period since the end of the Tokyo Round of trade negotiations has been marked by the expansion of non-tariff trade barriers, protectionist sentiment, and a growing disregard for the GATT system.

A new round of multilateral negotiations is needed to attack these barriers, negotiate new international agreements and restore the credibility of the GATT. At the present time, there is insufficient negotiating authority left to the Administration under existing U.S. law to cover the full scope and period of a new round of multilateral negotiations.

Business Roundtable Recommendations

The Business Roundtable's recommendations on multilateral trade negotiations are set forth in detail in its April 1985 statement: "Getting From Here to There: Preparation for a New Round of Multilateral Trade Negotiations". The following recommendations are based on that statement.

1. **NEGOTIATING AUTHORITY.** Authorize the President to enter into GATT negotiations for a ten-year period.

2. **NEGOTIATING FORMAT.** Authorize the use of the following negotiating format:

   a. Hold simultaneous negotiations on the full agenda of issues, sending new matters not ready for formal negotiations to working groups.

   b. Once consensus is reached in a negotiating group, have that matter taken up for immediate action by the full GATT membership (or participating GATT members, if handled on a conditional most-favored-nation basis).

   c. Establish a series of checkpoints to use during the negotiations in order to evaluate whether the negotiations are proceeding in an orderly and constructive fashion.

d. Bring back individual agreements or groups of agreements to Congress for approval as GATT (or subgroup) consensus is reached, rather than as a single package at the end of the MTN round.

e. Establish a fast-track Congressional approval procedure for individual agreements as used for the 1979 Tokyo Round agreements.

3. **BILATERAL NEGOTIATING AUTHORITY.** Authorize the President to open separate bilateral trade negotiations.

4. **EQUIVALENT SECTORAL OPPORTUNITIES.** Require that the President, in consultation with industry, seek to achieve competitive opportunities for United States exports and foreign investments equivalent to those opportunities afforded in the U.S. market in each sector (manufacturing, agriculture, services) on which negotiations occur.

5. **ECONOMIC BENEFIT DETERMINATION.** Where sectoral goals cannot be met and concessions must be traded between sectors to achieve multilateral agreement, require that the trade agreements presented for Congressional approval be accompanied by a Presidential report supporting a determination that the overall U.S. economy will benefit from such concessions.

6. **SPECIFIC NEGOTIATING OBJECTIVES.** The legislation should specify that the agenda of a new MTN round should include, but not necessarily by limited to, the following items (Specific objectives for each item are listed in the Roundtable's April, 1985 statement which is attached hereto):

   a. Safeguards Code

   b. Counterfeiting Code

   c. Subsidies Code

   d. Government Procurement Code

   e. Standards Code

   f. GATT Framework Issues

   g. Agricultural Trade

h. North-South Issues

i. Investment Issues

j. Trade in Services

k. Intellectual Property Rights Protection

l. International Information Flows

m. State Trading Issues

The Business Roundtable believes that major trade reform legislation and authorization of the new MTN is necessary. We look forward to working with this Committee and the Administration in developing constructive trade legislation which will help reduce and eliminate unfair barriers to trade and investment, and enhance protection of intellectual property rights.

GETTING FROM HERE TO THERE:

PREPARATION FOR A NEW ROUND OF MULTILATERAL TRADE NEGOTIATIONS

EXECUTIVE SUMMARY AND RECOMMENDATIONS

A. Need for a New Round of Multilateral Trade Negotiations.

A new round of multilateral trade negotiations is needed to address the trade distorting practices faced by U.S. business, labor and agriculture which handicap U.S. export efforts. A new round is also necessary to redress the tariff-based orientation of the system created by the General Agreement on Tariffs and Trade ("GATT"), and to equip the system to deal effectively with unresolved and contemporary trade problems.

B. Favorable Conditions Needed for a New Round.

A new MTN round should not be launched without a strong probability of success on major issues, since the GATT system might not survive a failed round. The following initiatives are important to assure the success of a new round:

(1) The U.S. Government must develop and implement a comprehensive trade and investment policy to promote U.S. exports and international investment and restrict unfair imports. This trade policy must include specific, enunciated policies to be pursued (a) during the negotiations to enhance the MTN round's chances of success, (b) in the event that key elements of the package the United States seeks are rejected by its trading partners, and (c) if no consensus on the holding of a new round can be reached.

(2) The United States, through consultations with its major trading partners, must assure that consensus exists on (a) the need for a new round, (b) a preliminary agenda for the round, and (c) the negotiating format for the round.

(3) The United States and its major trading partners must take the lead in organizing parallel discussions on economic and financial issues affecting trade, including the persistent disequilibrium of the current exchange rate system.

(4) The Executive Branch must have completed thorough preparations, including detailed consultations with business, labor, agriculture and Congress, concerning priority items to be sought by the United States on each likely agenda area and

concessions likely to be sought from the United States in the new round.

(5) The Executive Branch must request and receive a new grant of focused negotiating authority from Congress covering the anticipated period and specific scope of the MTN.

C. Timing of a New MTN Round

The Business Roundtable supports the commencement of a new MTN round, but believes that the precise timing of the start of formal GATT negotiations is less important than the adequacy of preparations for the negotiations. In the period prior to opening a new MTN round, efforts should be made at the GATT Working Group level to continue or initiate discussions on likely agenda items.

D. Negotiating Format

The Business Roundtable supports conducting the new MTN round in the format of "rolling negotiations" over a longer period than that of prior rounds. Issues should be taken up through simultaneous negotiations on matters of immediate concern to GATT members. As consensus on an agreement is reached in a negotiating group, the agreement is immediately brought back to the full GATT membership (or participating GATT members, if a matter is to be handled on a conditional most-favored-nation basis) for action.

E. Agenda Items

The Business Roundtable recommends that the following items be included on the agenda of a new MTN round. Priorities among issues, specific recommendations and negotiating strategies on these items will be established in the course of preparatory consultations with the Executive Branch.

(1) Unfinished Tokyo Round Business

Unresolved agenda items from the Tokyo Round and improvements needed to existing Tokyo Round codes include the following:

(a) Safeguards Code. A code is needed to impose discipline on the granting of "escape clause" import relief, covering injury standards, compensation for affected exporters, geographical selectivity in import restrictions, transparency, and consultation procedures.

(b) Counterfeiting Code. A code outlawing trade in counterfeit goods must address the scope of protected rights, a definition of counterfeit products, consultation procedures and enforcement mechanisms.

(c) Subsidies Code Improvements. The Subsidies Code requires amendments providing rules and policy guidance on the treatment of upstream subsidies, government export financing, agricultural subsidies, subsidies to facilitate adjustment to competition, third-country market disruption from subsidies, and subsidies fostering the growth of new industries.

(d) Government Procurement Code Improvements. The code should be expanded to cover government procurement of telecommunications, transportation and power generation equipment, and services. More procuring entities should be covered as well.

(e) Standards Code Improvements. The code should be amended to cover registration procedures for telecommunications equipment and services.

(f) GATT Framework Issues. The GATT system requires improvements to streamline and enhance use of and respect for GATT dispute resolution mechanisms, and to provide mechanisms for greater coordination with international financial institutions on economic policies affecting trade.

(g) Agricultural Trade. Trade in primary agricultural products must be made subject to GATT non-tariff barrier ("NTB") prohibitions through provisions addressing market access, trade impacts of domestic and export subsidies, and third-country market disruption from such subsidies.

(h) North-South Issues. Negotiating objectives include reducing tariff barriers in the newly industrialized countries ("NICs") and fostering their "graduation" from special GATT treatment accorded to less developed countries. Greater integration of Third World countries in the international trading system is also needed.

(2) Emerging Issues

The following issues have emerged as major issues since the end of the Tokyo Round:

(a) Investment Issues. Trade-related investment issues, such as officially-imposed performance requirements, should be placed under multilateral trade discipline through the GATT. The issues to be addressed include the dismantling of performance requirements, granting of national treatment to foreign

investors, compensation in case of expropriation, and dispute resolution, enforcement and consultation mechanisms.

(b) Trade in Services. Trade in services should be covered by GATT NTB prohibitions. Service industries should be afforded market access and establishment rights, non-discriminatory national treatment, transactional access to government monopolies, the right to provide value-added telecommunications network services, assurance of transparent regulation, and adequate GATT consultation, dispute resolution and enforcement mechanisms. An umbrella code for services, with sub-codes for specific service industries, should be negotiated on a conditional most-favored-nation basis. U.S. federal-state jurisdictional conflicts must be addressed in preparation for such negotiations for service industries subject to regulation by both levels of government.

(c) Intellectual Property Rights Protection. Adequate substantive protection must be granted by multilateral agreement for GATT members' patent, copyright, trademark, service mark and trade secret rights. An agreement would prohibit unreasonable restrictions on national grants of intellectual property rights, assure adequate national enforcement of such rights, grant authority to impose trade restrictions on countries that tolerate violation of such rights, and provide strong consultation and dispute resolution mechanisms.

(d) International Information Flow. A code to foster the free flow of information across national borders is needed. The code would provide for national treatment for foreign suppliers of information-related goods and services, non-discrimination for such suppliers on a most-favored-nation basis, market access without unreasonable restrictions, rights of free transmittal and return of data for foreign processing, transparent regulation, and prohibitions on trade distorting, information-related procurement, tariff and subsidy policy.

(e) State Trading Issues. GATT NTB disciplines should be extended to cover officially-required countertrade and barter transactions and sales and procurement transactions with state trading enterprises and government chartered monopolies.

GETTING FROM HERE TO THERE: PREPARATION FOR A NEW ROUND OF MULTILATERAL TRADE NEGOTIATIONS

In the five years since the Tokyo Round of multilateral trade negotiations ("MTN") ended in Geneva, nontariff barriers to international trade ("NTBs") have taken on new forms and resolutions to trade disputes outside the framework of the General Agreement on Tariffs and Trade (the "GATT") have become more the rule than the exception. In large measure, these situations arise because the GATT system is consensual, and the consensus stops where present trade problems begin.

Can a new consensus be forged to deal with the problems now confronting international trade? This hope underlies calls from various quarters in the United States, the European Communities ("EC") and Japan for a new MTN round to commence in 1986. This report by the Business Roundtable endorses the need for a new MTN round, and addresses the conditions required for successful consensus building, the timeliness of this call for negotiations, the available negotiating formats, and the substantive areas which a new MTN round must encompass to be effective.

* * *

The Tokyo Round of the MTN concluded as the world's economies were being buffeted by the second escalation of energy prices, followed rapidly by a deep global recession. The trade liberalization pledges made through the various new Tokyo Round codes immediately confronted domestic measures intended to deal with inflation, unemployment, oversupplies of basic commodities, the development of "high technology" sectors and, for some nations, inadequate liquidity and foreign exchange earnings.

In the United States, a dollar whose strength was buoyed by high interest rates has crippled export sales while pulling in imports, leading in 1984 to an unprecedented $123 billion trade deficit. The dollar's strength creates a huge vacuum effect, sucking capital out of the rest of the world into American capital markets where real rates of return are high and safe. This capital flow is retarding foreign economic growth by forcing up interes rates abroad, and devastating the budgetary assumptions of Third World governments deep in debt. Unless there is strong action by the President and the Congress to reduce U.S. Government borrowing and bring down interest rates, and a commitment by our industrialized trading partners to stimulate their domestic economic growth, the U.S. trade deficit is expected to reach a new record in 1985.

In this setting, domestic political and socio-economic pressures have pushed trade liberalization to the rear. Industrialized countries have adopted measures to protect domestic employment against low-cost imports from Third World debtor countries, who in turn are required to boost export earnings to maintain borrowing arrangements with the International Monetary Fund ("IMF") and commercial lenders. Basic products produced in oversupply to sustain acceptable employment rates continue to be subsidized to improve their export competitiveness, thereby moving the oversupply problem offshore. Industrial policies designed to foster new "high technology" sectors through government assistance are now commonplace. These policies often include subsidies and protection through tariff or NTB measures of inventive sophistication.

When affected domestic industries demand import relief, bilateral or plurilateral market sharing agreements are being negotiated outside the GATT framework to handle the problem. Prominent examples include U.S. agreements restricting steel imports, the Japan-EC agreements on cars, trucks, video tubes, stereos, and video tape recorders, and the Japanese "voluntary restraint agreements" ("VRAs") on automotive exports to the United States and Canada. Such agreements have the political benefit of providing concrete and immediate relief to domestic producers. Their disruptive effect, the undermining of the multilateral GATT framework, is only now being brought into focus.

Distortions in trade flows are remedied without attempting to deal with underlying misalignments in exchange rates and conflicting national economic policies that represent root causes of international disequilibrium. The GATT and the IMF Articles of Agreement provide for extremely limited interchange of expertise and require no harmonization of approach in meeting their respective members' trade and economic difficulties.

Against this background of pressures to fragment the multilateral trading system, the ability of that system to address critical trade issues now outside the GATT's scope, and the ability of the current international exchange rate mechanism to respond to trade impacts of capital flows have been seriously questioned. If the multilateral system regulated by GATT norms is allowed to collapse, trading relationships will increasingly be based on protectionist measures, destroying the stability and certainty upon which businesses and governments rely to plan for their economic growth. These consequences are politically and economically unacceptable in an interdependent world. Accordingly, the United States should exert its economic leadership, and call upon its major trading partners to exercise commensurate responsibility, to restore the vitality of the international trading system. To assure that the multilateral

system is equipped to deal with unresolved and contemporary trading problems, a new MTN round is necessary.

FAVORABLE CONDITIONS NEEDED FOR A NEW ROUND

A new MTN round should not be undertaken without a strong probability of success on major issues. A failed trade negotiation could severely jeopardize the GATT as an institution and GATT principles as a normative framework. To avert a failed round, careful groundwork must be laid by the United States and its trading partners. The following initiatives are important to the success of a new round:

(1) The Executive Branch, in consultation with Congress, business, labor and agriculture, must develop and implement a comprehensive trade and investment policy to promote U.S. exports and international investment and restrict unfair imports. This trade policy must include specific, enunciated policies to be pursued (a) during the negotiations to enhance the MTN round's chances of success, (b) in the event that key elements of the package the United States seeks are rejected by its trading partners, and (c) if no consensus on the holding of a new round can be reached.

U.S. business, labor and agriculture can no longer afford the economic uncertainty created by the lack of a coherent, comprehensive U.S. trade policy. Nor can a U.S. Government policy favoring negotiations be a substitute for a substantive U.S. trade policy. Without a clear view of our goals, the sacrifices we will accept to reach them, and the concrete elements that will constitute our trade policy, the United States cannot formulate a negotiating strategy nor can our preparations be expected to inspire commitment to a new round from our trading partners.

(2) The United States, through consultations with its major trading partners, must assure that consensus exists on (a) the need for a new round, (b) a preliminary agenda for the round, and (c) the negotiating format for the round. The February 1985 joint statement of the United States, Canada, the EC and Japan endorsing a new round provides a nucleus for building an international commitment to an MTN. However, the March 19, 1985 EC call for negotiations contains conditions and limitations on an MTN round agenda somewhat divergent from the views expressed to date by members of the U.S. Administration and Congress, and by Canada and Japan. An MTN round launched by fundamental disagreements on an agenda or negotiating format will only undermine the multilateral negotiating process and make consensus more difficult to obtain.

(3) The United States and its major trading partners must take the lead in organizing parallel discussions on economic and financial issues affecting trade, including the persistent disequilibrium of the current exchange rate system. The goal of parallel economic talks would be to assure a more integrated approach to trade problems, where such problems are created or exacerbated by monetary or financial conditions not subject to resolution through GATT mechanisms. For the United States, a priority in such discussions must be the reform of the exchange rate mechanism to avoid sizeable imbalances in currency relationships, such as now exist with respect to the dollar and which threaten the stability of the international trade and monetary systems. Former United States Trade Representative William Brock stated in November 1984 that "[t]he explosion in the price of the dollar has made life more difficult than all the trade barriers in all the countries of the world put together." The U.S. Government must recognize the strong dollar as a trade problem seriously injuring American competitiveness and address this problem simultaneously with other barriers to U.S. exports. While no preconceived measures for specific changes in the international monetary system need be agreed upon prior to undertaking such discussions, a willingness to link discussions of trade and economic issues is necessary to avoid the compartmentalized approaches to trade and financial policy that have caused much of the existing conflict.

(4) The Executive Branch, Congress, business, labor and agriculture must have completed thorough preparations, including detailed consultations with each other, concerning priority items to be sought by the United States on each likely agenda area and concessions likely to be sought from the United States in the new round. These consultations should focus on the immediate and anticipated trade problems faced by various sectors, and the domestic and foreign market concessions U.S. industry is willing to make to obtain solutions to those problems. Discussions with Congress should also include new legislative initiatives to increase the bargaining power of United States negotiators in a new MTN round. The preliminary consultations underway between the office of the United States Trade Representative and the private sector are a promising first step in the preparation for the new MTN Round.

(5) The Executive Branch must request and receive a new grant of focused negotiating authority from Congress covering the anticipated period and specific scope of the MTN. To date, the U.S. Government has shown little inclination to treat international trade as a high priority economic issue. The formidable task of winning adequate new negotiating authority from Congress on anticipated MTN agenda items is one place where the President's authority can and must be asserted. The

Executive Branch now has limited negotiating authority. This authority expires at the end of 1987 for NTBs in goods, services and foreign direct investments and for improvements to Tokyo Round agreements, and in October 1989 for agreements and tariff changes on certain high technology items. If trade discussions were commenced in 1986 under this existing authority, the entire MTN could be derailed in midstream by congressional renewal legislation that changes the scope of U.S. negotiating authority or adds new congressionally-mandated agenda items. In view of the serious problems confronting the multilateral trading system and the varying degrees of enthusiasm around the world for a new MTN round, the possibility that U.S. negotiators might be left without adequate negotiating authority to successfully complete a largely U.S.-inspired MTN round must be avoided.

The legislative grant authorizing U.S. participation in a new MTN round should require our negotiators to seek competitive opportunities abroad for Americans equivalent to those afforded by the United States to foreign businesses, on a sector-by-sector basis.

TIMING OF A NEW MTN ROUND

This is an opportune time to start preparation for, and to commence, an MTN round to reach a new consensus on trade issues. For the United States, however, the precise timing of a new round is not as important as the need for focused negotiations based upon thorough preparations. If lack of adequate preparations of the types outlined above delays the commencement of full GATT negotiations beyond 1986, productive discussions at the Working Group level can continue, or be initiated, on the trade issues likely to be central to a new round. Continuing efforts to complete the Work Program of the 1982 GATT Ministerial are an example of such useful discussions at the Working Group level.

NEGOTIATING FORMATS

A new MTN round should be conducted using a "rolling negotiation" format. In this format, a longer period than in traditional MTN rounds is used for simultaneous negotiations on problems of immediate concern to the participants. In such a setting, an agreement is brought back from committee for ratification by the full GATT membership only when its negotiating group has forged a consensus. At that time, implementing action can be taken in that limited area while other negotiations continue.

Issues on which little or no consensus exists at the outset would be aired over a prolonged period, without the time pres-

sures of the traditional MTN framework. In areas where offsetting concessions in several unrelated negotiating groups are required to reach a balancing of interests permitting an overall accord, no results would be expected until an advanced stage of the negotiations, by which time parameters for agreements and sticking points in various negotiating groups would have become apparent. Movement on issues over the full course of the MTN could be promoted in the legislative grant of U.S. negotiating authority by setting benchmarks for results at various dates over the course of the new round.

The protracted period of rolling negotiations will also facilitate the forging of a new global view of trade and international financial issues. Such a new view is needed to bring the GATT system more into harmony with the nuanced governmental objectives behind different types of trade and economic intervention. The existing conceptual framework of the GATT is largely limited to tariff barriers to trade and determining the monetary equivalents of NTBs for use in remedies to trade distortions.

In the context of rolling negotiations, the United States should maximize benefits for U.S. industry by seeking negotiations and formal agreements (both under GATT auspices) with any willing trade partners on topics requiring action, even if such negotiations and agreements do not include all GATT members. Using the conditional most-favored-nation basis adopted in the Tokyo Round codes, additional GATT members may accede to the agreements reached at a later time.

Traditionally, MTN rounds have been conducted over a relatively brief and finite period, in pursuit of a package of agreed results established in preparatory discussions and embodied in a GATT Ministerial Declaration. Such a format has the advantage of presenting a package containing the seeds of compromise among a broad spectrum of trading interests, since only a package with broad and balanced appeal is capable of attracting majority support among GATT members. Its disadvantage is that the severe time pressure of a traditional round reduces the depth of negotiations to the lowest common denominator, making it likely that further negotiations will soon be required. An outstanding example of this problem is the Tokyo Round.

An alternative to the traditional round proposed by some would be a negotiation centered around a "mini-package", with a narrow focus on agenda items having a likelihood of rapid consensus. Such a negotiation, although presenting an opportunity for a showcase "success", could not, by its limited nature, address the major issues now confronting the trading system.

AGENDA ITEMS

The following groupings of issues appear as major areas of concern, which an MTN round should address. The issues are not listed in order of priority. Such priorities, specific recommendations and negotiating strategies must be established in the course of the preparatory consultations outlined above.

A. Unfinished Tokyo Round Business. Consensus has yet to be achieved on several agenda items not resolved during the Tokyo Round. In addition, several areas dealt with in Geneva in the 1970s had intentional gaps in coverage where agreement to negotiate could not be reached. These sets of unfinished and excluded items encompass trade problems which have been exacerbated in the 1980s, and include the following:

(1) Safeguards Code. Elements to be addressed in reworking GATT Article XIX or supplementing it in a new code governing the granting of "escape clause" relief include (a) the standards of injury or threat of injury to be applied in such cases, (b) the linkage of import relief to a program of industry adjustment to import competition, (c) whether and how exporting countries are to be compensated for import restrictions, (d) the proper role of selectivity (rather than most-favored-nation treatment) in the geographical application of safeguards measures, (e) the transparency required in remedies adopted to protect domestic industries, and (f) improved GATT procedures for consultation among affected GATT members when escape clause measures are to be applied.

(2) Counterfeiting Code. The elements of a code outlawing commercial counterfeiting should include (a) definition of the types of intellectual property rights to be protected, (b) definition of "counterfeit" products (including the issue of whether goods produced under license may ever be excluded as "counterfeit" from the licensor's or another licensee's territory), (c) GATT consultation procedures on matters such as enforcement and deterrence, and (d) enforcement mechanisms.

(3) Subsidies Code Improvements. The existing code should be refined to provide detailed rules and policy guidance with respect to (a) upstream subsidies, (b) official export financing programs, (c) agricultural subsidies, (d) subsidies introduced to facilitate adjustment, (e) minimization of third-country market disruption from subsidies, and (f) subsidies fostering the growth of new industries. Negotiations should also address whether there is continuing validity in the code's distinction in the treatment of border tax adjustments between "direct" and "indirect" taxes.

The sophisticated use of subsidies to achieve a variety of domestic and international social, trade and economic goals has stimulated increasing discussion concerning the proper uses of government intervention and the best means of responding to subsidies' trade impacts. A similar domestic debate has grown in the United States. For this reason, discussion of improvements to the Subsidies Code will require consideration of whether the Code is the best way to address all forms of trade distortions from subsidies, or whether other approaches (perhaps those to be negotiated in a Safeguards Code) better fit contemporary problems.

There is a wide disparity in industrial development philosophies among nations, ranging from reliance on market forces to state owned and directed economies. This disparity substantially influences the competitive environment in specific countries and the world trading economy. The GATT framework attempts to address some of the practices that result from government industrial development efforts, such as subsidies and government procurement discrimination. However, other practices are not addressed, such as formation of cartels, dual pricing of raw materials, and allocation of capital to favored sectors. The multilateral trading system must develop a broader consensus on appropriate objectives and practices individual countries may pursue with reference to the country's stage of development and the trade impact of the practice. Since industrial development objectives and practices change over time, the GATT framework must also be flexible enough to adjust to such changes.

(4) Government Procurement Code Improvements. The code should be expanded to cover procurement of (a) telecommunications equipment, (b) transportation equipment, (c) power generation equipment, and (d) other items raised in the course of sectoral preparatory consultations. Government procurement of services, a vast and expanding area for which American firms are particularly well poised to compete, should also be included under the Government Procurement Code. The code should also be extended over time to cover procurement by all entities exercising national governmental functions, under self-executing definitions of such entities and functions.

(5) Standards Code Improvements. The code should be amended to specifically cover procedures for the registration of telecommunications equipment and services.

(6) GATT Framework Issues. Issues to be addressed include improvements to dispute resolution mechanisms and mechanisms for greater coordination with international financial institutions on economic policies affecting trade. In the area of trade disputes, emphasis should be placed upon (a) stream-

lining procedures for dispute resolution, (b) ensuring that adequate resources exist within the GATT system for objective review of problems, (c) deterring circumvention of dispute resolution procedures, and (d) compliance with GATT panel recommendations.

(7) Agricultural Trade. Issues to be addressed include (a) extension of GATT NTB prohibitions to trade in primary products, (b) market access, (c) impacts of domestic and export subsidies on bilateral trade in agriculture, and (d) third-country market distortions from such subsidies.

(8) North-South Issues. Many of the issues noted in this report are particularly acute with respect to trade between industrialized and developing countries. In addition, North-South negotiations are needed within the GATT framework to (a) assure that the newly industrialized countries ("NICs") of the Third World dismantle market barriers no longer justified by their level of development and their competitiveness in world markets, (b) foster increasing integration of the Third World into the multilateral trading system, (c) increase adherence of Third World countries to the disciplines of the GATT, including "graduation" of the NICs from preferential treatment under the "Trade and Development" provisions of the GATT, and (d) avoid fragmentation of multilateral trade negotiations in the form of extra-GATT, Third World-sponsored trade negotiations in the U.N. Conference on Trade and Development ("UNCTAD").

B. Emerging Issues. The following issues have come to the fore as areas of concern since the conclusion of the Tokyo Round.

(1) Investment Issues. The GATT should be expanded to cover trade-related investment issues. A code covering performance requirements should be negotiated to (a) identify the requirements now imposed, (b) achieve a moratorium on new performance requirements, and (c) reach agreement on (i) the eventual dismantling of all such requirements, (ii) the granting of national treatment to foreign investors, (iii) the provision of prompt, adequate compensation in the event of expropriation, and (iv) the building of strong dispute resolution, enforcement and consultation mechanisms.

(2) Trade in Services. Issues to be addressed include (a) coverage of trade in services by the NTB prohibitions of the GATT and its related codes, (b) market access, including the right of establishment where competitiveness requires a local presence, (c) the granting of national treatment, including non-discriminatory licensing treatment, (d) rules governing transactions between government monopolies and private firms, (e) the right of private firms to offer value-added telecommunication

network services, (f) the assurance of transparency in national regulation of trade in services, and (g) the provision of consultation and dispute resolution procedures with adequate enforcement mechanisms, applying GATT "balance of concessions" rules.

These objectives can be achieved through the negotiation of an umbrella agreement on trade in services, with subcodes addressing the needs of specific service industries. The umbrella agreement and industry codes should be negotiated on a conditional most-favored-nation basis. In carrying out their negotiating mandate, U.S. negotiators must be sensitive to the wishes of those U.S. service industries that desire to be exempted from coverage under any form of multilateral agreement or code.

Adequate preparation for negotiations on trade in services also requires analysis and proposals for resolution of federal-state jurisdictional conflicts because significant service industries, such as banking and insurance, are regulated at both governmental levels. The reluctance of our trading partners to accept the Government Procurement Code with a U.S. exception for state and local procurement restrictions will be heightened with respect to trade in services.

(3) Intellectual Property Rights Protection. In addition to adoption of a Counterfeiting Code covering importation of counterfeit products, inadequate national protection and enforcement of intellectual property rights requires multilateral review. Issues to be addressed include (a) adequate minimum standards for GATT members' protection of patent, copyright, trademark, service mark and trade secret rights, (b) prohibitions on unreasonable restrictions on intellectual property right grants (such as compulsory licensing, inadequate protection periods, and excessively low ceilings on compensation), (c) adequate enforcement mechanisms independent of national laws, (d) authority to impose import restrictions against countries that tolerate the violation of intellectual property rights, and (e) strong consultation and dispute resolution mechanisms.

(4) International Information Flow. A code is needed to foster the free flow of information across borders. Elements of such a code would include (a) national treatment for foreign suppliers of information-related goods and services, (b) non-discrimination based on most-favored-nation rights and privileges, (c) market access without costly barriers or establishment requirements, (d) assurance of free transmittal and return of data to be stored or processed abroad, (e) transparency of national laws affecting information flows, and (f) prohibitions on trade-distorting procurement, tariff and subsidy policies affecting information-related industries.

(5) State Trading Issues. GATT disciplines must be imposed on such trade distorting practices as the imposition of (a) official barter and countertrade requirements and (b) discriminatory barriers to sales and procurement transactions with state trading enterprises and government chartered monopolies.

Mr. PEASE. Mr. Skovholt, thank you very much. That was excellent testimony, and there is a lot of good meat in that testimony, and we very much appreciate having it.

Mr. McNeill, we are going to have a vote. We could go for about 10 minutes. How long do you think your testimony will take?

Mr. MCNEILL. Mr. Pease, one of the virtues of what I'm about to say is that I'll be very brief.

Mr. PEASE. Good. Why don't you proceed, then.

STATEMENT OF ROBERT L. McNEILL, EXECUTIVE VICE CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. MCNEILL. I'll proceed. I'm delighted to be here on behalf of my employer, the Emergency Committee for American Trade. ECAT is an organization of the heads of 60 business leaders representing companies who have $700 billion in annual sales and about 5 million employees on a worldwide basis. We have an abiding interest in what you're doing in this committee because our members' profits and their viability in the world market depends, in part, on U.S. trade policy.

Before I comment on changes in the import safeguard statutes, I would simply like to say that we share your concern and the concern of the American public generally about inequities in the international trading system, as well as the concern of the American people about our burgeoning U.S. foreign trade deficits.

Let me just comment in light of the few moments remaining about our recommendations, and I will summarize them.

In respect to section 201, the escape clause, we have examined it rather thoroughly, and, as a general rule, those in my organization believe that the President should retain his discretion to be able to weigh the national interest against the likely consequences of implementing recommendations of the International Trade Commission.

There is one major exception that we would suggest to the committee, and that is in instances where the International Trade Commission has unanimously recommended—I should say, unanimously found—serious injury, that in such instances, the President should be required to take an affirmative action. That action hopefully would be the provision of adjustment assistance or perhaps the negotiation of a voluntary restraint program or even the imposition of the recommended import relief by the International Trade Commission.

The second major recommendation that we have with respect to section 201 has to do with the causal relationship between imports and serious injury suffered by domestic industries. What we recommend essentially in our statement is a two-track system. The current system of requiring that imports be a substantial cause of serious injury, we would recommend be retained as the normal threshold; however, in times of economic recession, we would recommend a second track whereby you would not have to prove that imports were no less important a cause than any other cause, which is the current definition in the statute of "substantial relationship" between the imports and the injury.

The reason for our recommendation is—it goes back really to the UAW automobile case, where the ITC found serious injury, but found that the recession at that time was a more important cause of the serious injury than the imports of automotive products, primarily from Japan.

Subsequently, in the case of the motorcycles, the ITC, during recession, made an affirmative determination. But we are concerned that future Commissioners in future instances may usually find that in times of recession that that would be a more important cause than imports, and we think that would undermine the credibility and the viability of the 201 mechanism in the eyes of the American public.

We have other recommendations, Congressman. It is late. You've asked me to be brief, and I will comment on only one more, and that has to do with section 301.

On section 301, we again believe the President requires flexibility; however, in instances where the unreasonable or the discriminatory foreign practice is illegal as measured by the GATT or any other international legal agreement, we would recommend that in such instances the President be required to retaliate after he has followed the normal process of negotiation and perhaps the invocation of the GATT dispute settlement procedures.

We have other recommendations. They are in the paper we have submitted. I think these are the major ones we have, and as I told you, I would be brief, and I thank you.

[The prepared statement follows:]

STATEMENT OF ROBERT L. McNEILL, EXECUTIVE VICE CHAIRMAN
EMERGENCY COMMITTEE FOR AMERICAN TRADE, BEFORE THE
COMMITTEE ON WAYS AND MEANS SUBCOMMITTEE ON TRADE
HEARINGS ON TRADE REFORM LEGISLATION

Thursday, March 20, 1986

SUMMARY

ECAT recommendations for changes in U.S. import safeguard statutes include the following:

Section 201

In cases where the ITC makes unanimous findings of serious injury, the President should be required to take action on one or more of the alternatives available to him, including adjustment assistance.

During times of economic recession, it should not be necessary to demonstrate that imports are "no less important than any other cause" in order that Section 201 be operable during periods of recession.

Section 301

The President should retain his discretion as to whether or not to retaliate against objectionable foreign practices unless such practices are found to be illegal under international law or regulations.

Non-Market Economies

There should continue to be a pricing test for NME exports even though the determination of appropriate prices is fraught with difficulties.

Section 337

This section should be amended to drop the injury test currently required as a condition of providing import relief from imported products that are in violation of U.S. patents and copyrights.

Section 331

The President should be required to act in Section 332 cases in a certain period of time.

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STATEMENT OF ROBERT L. McNEILL, EXECUTIVE VICE CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE, BEFORE THE COMMITTEE ON WAYS AND MEANS SUBCOMMITTEE ON TRADE HEARINGS ON TRADE REFORM LEGISLATION

Thursday, March 20, 1986

Mr. Chairman and members of the Ways and Means Committee, I am pleased to be here on behalf of the Emergency Committee for American Trade (ECAT) to comment on trade reform legislation. ECAT is an organization of the leaders of 60 large U.S. business firms with worldwide annual sales approximating $700 billion and with over 5 million employees. ECAT members conduct business throughout the world and have an abiding interest in U.S. trade policies. These policies directly and indirectly affect the conduct and profitability of their worldwide business operations.

It is appropriate that the Ways and Means Committee together with other committees of the Congress review U.S. trade statutes and policies to see if they are adequate to the difficult economic times besetting the United States and its trading partners. We commend the effort and hope that our comments and recommendations will be of help to you in your search for constructive trade legislation.

ECAT's purpose is to support legislative and other measures that will expand international trade and to oppose those measures that through violations of U.S. international commitments would restrict international commerce. We are firm supporters of the international trading system that was put in place in the years following World War II and would like to see the system improved through further international negotiations. Indeed, we think that such improvement should be the basic purpose of the proposed new round of international

trade negotiations that we strongly support.

Before commenting on specific legislative issues, we would like to express that we share the concern of yourselves and the American people about the huge and continuing U.S. foreign trade deficits. We also share the general concern that the international trading system entails a lot of inequity. But we are also concerned that our reactions be measured ones that will advance and not detract from our national interests.

We are firmly convinced that U.S. trade policy is not the root cause of our foreign trade deficits. Analysts who have looked at this estimate that perhaps as much as $10 billion of the trade deficit may be attributable to trade policy with the remaining $140 billion attributable to such macro-economic issues as the U.S. budget deficit and the resultant overvalued dollar, as well as to the political and economic safe haven that the United States represents to foreign investors. Basic solutions to the huge foreign trade deficits, therefore, must be sought ouside the area of trade policy although appropriate changes in trade policies can assist in helping achieve acceptable solutions.

Fortunately, recent international financial and monetary steps by the United States, Germany, France, the United Kingdom and Japan are helping correct the problems of the overvalued dollar and inadequate domestic economic growth in Germany and Japan. We applaud these cooperative actions by the United States and the others and we point to them as stellar examples of what international negotiation and cooperation can achieve.

There are many in the Congress and elsewhere who question the

viability and efficacy of our import safeguard statutes. We share a degree of this doubt and, accordingly, appointed an ECAT task force that examined the principal statutes and recommended changes in them that were accepted by ECAT's membership at its 1986 annual meeting The principal proposals and recommended ECAT positions on them are as follows:

Section 201

Section 201 is the basic "escape-clause". It conforms to Article XIX of the GATT which authorizes the increasing of tariffs or the imposition of import quotas in cases where imports are a cause of serious injury to domestic industries. Escape-clause cases involve fairly traded items where competition itself is the reason for serious injury and not such unfair actions as "dumping" or export subsidies.

Since January 1975, there have been 55 Section 201 cases. In 32 of these cases the International Trade Commission (ITC) found imports to be a cause of serious injury and recommended import relief. In 11 of these cases the President agreed and provided import relief.

In another very important Section 201 case several years ago, the ITC rejected an UAW petition for import relief but the President worked out an auto export restraint arrangement with Japan.

The most contentious Section 201 case in recent years has been the shoe case. In 1984, a split ITC found serious injury and recommended import relief. Invoking his discretion, the President rejected the ITC recommendation. A year later the domestic shoe industry again petitioned for Section 201 relief. This time a unanimous ITC found serious injury and again recommended import relief that again was rejected by President Reagan. This led to the introduction of bills

that would limit or eliminate the President's ability to reject ITC recommendations and also to the shoe import quota legislation that became part of the textile import quota bill.

Legislation amending Section 201 while dealing with a number of technical matters involves two principal issues that are designed to make Section 201 import relief more certain.

The first of these would limit or remove the President's discretion to reject the findings and recommendations of the International Trade Commission. The President currently has the authority to do this when he determines that the national interest would be better served by not imposing import relief.

The second of these measures would lower the threshold standard that imports must be a "substantial" cause of serious injury to domestic industries in order for an industry to be eligible for import relief. The lower threshold standard would be that imports simply be "a" cause of serious injury. The lower standard presumably would make import relief easier to attain.

ECAT's recommendations for changes in Section 201 are as follows:

a. On Presidential Discretion

As a general rule, ECAT agrees that the President requires discretion to be able to weigh the national interest against the likely consequences of implementing import relief measures recommended by the International Trade Commission (ITC) in Section 201 cases.

However, we recommend an exception to this general rule in cases where there is a unanimous finding by the ITC of serious injury to an industry. In such cases the President would be required to take action on one or more of the alternatives available to him. These include

providing a program of adjustment assistance, which could embrace antitrust exemptions as a means of fostering the competitiveness of domestic producers, negotiating a voluntary restraint program with foreign exporters or providing import relief along the lines recommended by the ITC. This recommendation of ECAT is contingent on there being a program of adjustment assistance.

b. On Shifting Presidential Section 201 Authorities to USTR

ECAT does not object to shifting Presidential Section 201 authorities to the United States Trade Representative so long as current interagency processes continue to apply and so long as it is clearly understood that the USTR is free to seek the advice of the President when it is clear that important national interests are involved in implementing Section 201 recommendations from the ITC.

Such a shift would have the positive benefit of enhancing the position of the USTR both at home and abroad.

c. On the Causal Relationship Between Imports and Serious Injury

ECAT recommends that the current Section 201 requirement that imports be a "substantial" cause of serious injury should continue to be the normal threshold standard. However, we recommend that Section 201 should be amended to provide that during times of domestic economic recession -- as officially measured -- the threshold for import relief could be lowered by providing that imports do not have to be a cause "no less important than any other cause," which is the current definition of a "substantial" cause. This recommendation is addressed to situations like the one involved several years ago when the ITC found in a Section 201 investigation that the recession was a more important cause of the depressed auto industry than imports. Although

the ITC in a subsequent case made a Section 201 import relief recommendation during time of recession, different commissioners might arrive at a different conclusion in future cases.

In absence of a statutory change of the type recommended it is conjectural whether Section 201 relief will be operable during periods of economic recession since imports will likely be found to be a less importance cause than recession. Congress would then be called on to provide the relief requested. Implementation of this recommendation could avoid this and would help to restore the public's faith in Section 201 as a viable import relief mechanism.

d. On a Trade Adjustment Plan

ECAT believes that plans to adjust to import competition can be instrumental in the process of adjustment and that they should be encouraged but not required to be a part of petitions to the ITC for Section 201 relief. To be economically feasible, such adjustment plans should be jointly agreed to by management and labor and such plans should be taken into account by the ITC and by the President when weighing whether to provide import relief.

In the case of the second-track just recommended above for Section 201 investigations during times of domestic economic recession, Congress might consider making submission of an adjustment plan a mandatory requirement.

If an adjustment plan is part of any Section 201 relief package, the continuation of relief should depend in part on whether the adjustment plan was being adhered to.

ECAT does not believe that government should be a participant in drafting the adjustment plan. That should be the responsibility of the

industry and unions concerned. Government's role in the Section 201 cooperative adjustment process would be to provide adjustment assistance programs and/or import relief.

Section 301

Section 301 of the Trade Act authorizes the President to impose import restrictions on products from countries that maintain "unreasonable", "unjustifiable", or "discriminatory" restraints that burden United States commerce. Before exercising this authority the President is expected to seek a satisfactory resolution with the country or countries concerned either through invoking the GATT dispute settlement procedures or through separate negotiations or through a combination of both. If these efforts prove unsuccessful, he can then retaliate against the foreign country in a variety of ways. Section 301 authorizes the President, however, to retaliate without utilizing the GATT procedures or without seeking a negotiated settlement.

Section 301 has been invoked a number of times. Retaliation has generally not been necessary since its invocation has led to negotiated settlements in a number of instances. Nevertheless, there is a feeling among many in the Congress that Section 301 should be amended to limit the President's discretion both through requiring retaliation and through shifting his Section 301 responsibilities to the United States Trade Representative.

ECAT's recommendations on various legislative proposals to amend Section 301 follow:

a. On Presidential Discretion

We recommend that in instances where Section 301 is invoked against illegal foreign practices -- as measured by the standards of

the GATT or any other bilateral or multilateral agreement -- and where the dispute settlement procedures of the GATT or other relevant procedures have been followed and have vindicated the U.S. claim, then the President should be required to retaliate against the concerned foreign parties if a satisfactory accommodation of the Section 301 complaint has not been achieved.

ECAT recommends that in all other Section 301 cases, the President should retain his current discretion as to whether or not to retaliate against objectionable foreign practices.

b. On Publishing Lists of Products Subject to Section 301 Retaliatory Actions

We recommend that a procedure either be legislated or promulgated through rules and regulations whereby lists of products to be retaliated against in Section 301 cases be published in a timely fashion so that U.S. industries or firms will have the opportunity to comment as to whether their economic interests might be damaged.

c. On Shifting Presidential Section 301 Authorities to USTR

As under Section 201, ECAT has no objection to shifting Presidential Section 301 authorities to USTR so long as interagency procedures continue to apply and so long as it is understood that the USTR is not prohibited from consultation with the President concerning issues of the national interest.

d. On Foreign Targeting Practices

We believe that foreign "targeting" practices fall within the scope of Section 301, and that it, therefore, would be unwise and unnecessary to single "targeting" out as a separate actionable cause under Section 301.

Since "targeting" is difficult to define, it is recommended that efforts be made in the GATT and elsewhere to seek common understandings as to which "targeting" activities are objectionable and, therefore, contrary to GATT and other international contractual undertakings.

e. On the Question of Timing

We have no objection to reasonable time limits being imposed during which time the President would be required to conclude Section 301 cases.

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We feel that the proposed legislative revisions of Sections 201 and 301 are the most serious ones before the Congress. Our above recommendations are designed to respond to legitimate complaints about them while maintaining their conformity to accepted international law and practice. To do otherwise could subject vital U.S. exports to foreign restraints.

Our members have either reaffirmed or developed positions on several other U.S. trade statutes. A brief summary of our positions is as follows:

The Countervailing Duty and Antidumping Statutes

The two major proposals to amend these statutes deal with resource input subsidies and non-market economies. Since we understand that a separate hearing will be held on resource input subsidies, we will not comment on that subject here.

On Non-Market Economies

A major legislative proposal amending the countervailing and antidumping statutes deals with the question of whether there should be a pricing test for imports from non-market economies. Some believe

that appropriate prices cannot be determined for products from non-market economies and that there should be no pricing test but only an injury test. The issue is a major and timely one because mainland China is considering returning to the GATT.

After examining the issue of whether there should be a pricing test in processing countervailing and antidumping complaints about imported products from non-market economies, ECAT recommends that there should be such a test even though construction of fair market prices will be somewhat controversial and artificial. We believe that not to have a price test would bestow advantages on non-market economies.

Section 337

A further ECAT recommendation deals with Section 337 of the Trade Act which authorizes restraints on imports that violate U.S. patent and copyright laws. The issue is whether in addition to determining patent violations the further requirement of current law that economic injury also be demonstrated as a condition of import relief should be maintained or deleted from Section 337.

ECAT recommends that Section 337 be amended to drop the injury test required as a condition of providing import relief from imported products that violate U.S. patents and copyrights. The reason is that such violations are breaches of U.S. law which is sufficient reason for import restraints.

Section 232

This section authorizes the President to impose import restraints on products that impair or threaten to impair the national security. It has been invoked but once and that was by President Eisenhower who imposed import restrictions on oil imports.

There currently has been before the President for a couple of years a Section 232 recommendation dealing with imports of machine tools. The legislative issue is whether the President should be required to act on Section 232 cases in a certain period of time. ECAT supports a legislated time limit.

Mr. Chairman, the above is a summary of our ECAT recommendations for changes in U.S. import safeguard statutes. We hope that they will be helpful to you and your colleagues.

Before concluding, let me express ECAT's support for negotiations with Canada for a comprehensive bilateral economic pact and for a new round of multilateral trade negotiations under the auspices of the GATT. We believe that both prospective negotiations should develop rules for the treatment of foreign investments, for trade in services and for the protection of intellectual property rights.

We hope that international trade negotiations will lead to the completion of unfinished GATT business such as conclusion of safeguard and counterfeiting codes and to improvements in the GATT structure, particularly in its dispute settlement procedures.

We also urge the Congress and the Administration to develop procedures for more close coordination within the U.S. government of international trade, financial and monetary issues. We make the same recommendation for closer coordination between the GATT and international financial institutions.

Thank you for having us here today.

Mr. PEASE. Thank you very much, Mr. McNeill. You were brief indeed.

Mr. Crane, we have about 5 minutes, if you would like to inquire, and then we can recess, if necessary, and come back.

Mr. CRANE. All right. Thank you, Mr. Chairman.

A quickie question of Mr. Skovholt. In (d), on the multilateral negotiation authority, under the recommendations, there are four references to the President or Presidential determination.

Do you, in light of (a), subtitle 1, the transfer of authority in 301 cases, do you intend that the President should be that person operating in the multilateral negotiations, or would that, if your first recommendation on transferring of authority into the hands of the U.S. Trade Representative, would that read the USTR under that multilateral negotiating authority?

Mr. SKOVHOLT. The President would retain final authority; the USTR would be responsible for actual negotiations.

Mr. CRANE. It would be the President, if that first recommendation were implemented.

One other thing, under mandatory relief, you recommend that the President develop and implement a relief program. Could you just quickly give me an example of what the program might look like?

Mr. SKOVHOLT. This would be under section 201, the escape clause.

Mr. CRANE. Right.

Mr. SKOVHOLT. It might include adjustment assistance for workers, adjustment assistance for firms. We think you should be looking at various forms of domestic relief. Perhaps the administration has a suggestion on this in terms of loosening antitrust laws or maybe temporarily loosening other regulations.

Our proposal is at a very general level in terms of suggesting what you ought to do. But we're trying to say that section 201 really ought to facilitate adjustment, and there are a lot of things that could be considered in the domestic area that could help that industry adjust and strengthen itself to enable it to be a viable industry once the 201 relief has been completed.

Mr. CRANE. Mr. McNeill, is there anything you would add to that?

Mr. MCNEILL. No, I would not add to that, except to express my personal skepticism about the viability or feasibility of the trade adjustment program.

I think it is a necessary component for the President to have, in part so that we may be able to continue to maintain a liberal trade policy. But in respect of the actual working of such programs, the experience of the past—other than the unemployment assistance component—has not been a very good track record.

And I would hope that the future Trade Adjustment Assistance Program would emphasize retraining and provide vouchers and such things. And if it does that, I think it could be a very useful thing.

I think the ability of government officials to be able to help to run private enterprises through developing the adjustment assistance plan is a very questionable assumption.

Mr. CRANE. Thank you.

Mr. PEASE. Thank you, Mr. Crane. I have just a couple of quick questions.

Mr. McNeill, what proportion of the members—business members of your group belong to the Business Roundtable?

Mr. MCNEILL. I have never looked, sir, but I would imagine that they are the same members that support the Chamber of Commerce and the NAM and the Roundtable and every other trade association in town. The Roundtable tends to have very large enterprises, as do I. So I would imagine that there is a commonality of at least half of my membership.

Mr. PEASE. I was intrigued by the recommendations of each group, in regard to the USTR having the final authority under section 201 I guess—301.

Obviously, your members came to different conclusions. I supposed that is not unusual. Well, I just wanted to note that.

Mr. MCNEILL. I do not think, Congressman, that the differences are terribly great, in respect to the President's authority because if you look at both recommendations I think you will find at the end that we both believe that the President has to have a say.

And in our case, we find it somewhat unrealistic to assume that an officer serving in the Cabinet of a President would not speak to that gentleman and at least be aware of his interests in cases where the national interest is involved.

So I am not sure that the difference is really a substantial one.

Mr. PEASE. Could you give me just a quick comment on the question of auction quotas? Do you either one of you have a position on auction quotas?

Mr. MCNEILL. I had breakfast this morning with Fred Bergsten and other friends who are oldtimers like myself in the trade field. And we had a very considerable debate about it.

My organization—and I cannot speak for the Roundtable, but I do not believe that either one of us has examined the issue.

The inherent disadvantage that initially would appear to me, as an individual, is that if you switch the enforcement of the quotas from the exporters to the Americans you would then—granted, you might get these billions of dollars—but you would build in a bias for continuation of that source of revenue.

Mr. SKOVHOLT. The Business Roundtable does not have a position, but it seems to me it is the kind of idea that needs consideration and thinking. And it is those kind of things that lead us to better ways to deal with some of these problems.

Mr. PEASE. I must rush off and vote now, but I would again like to thank both of you and your organizations. You have given us the kind of detailed, specific, thoughtful reactions to these proposals which are going to be immensely helpful to the committee.

Again, thank you very much.

This will conclude today's hearing. The subcommittee hearings will reconvene tomorrow, March 21, in this room at 9:30 a.m.

[Whereupon, at 3:15 p.m., the subcommittee was adjourned, to reconvene at 9:30 a.m., on Friday, March 21, 1986.]

TRADE REFORM LEGISLATION

FRIDAY, MARCH 21, 1986

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:45 a.m., in room 1100, Longworth House Office Building, Hon. Frank J. Guarini presiding.

Mr. GUARINI. Good morning, ladies and gentlemen

Today we will continue with our hearings on comprehensive trade reform with a very distinguished group of witnesses, including our colleague, the minority leader of the House, Bob Michel. Before we begin I would like to announce that the hearings scheduled for next Tuesday, March 25, have been canceled. We will continue these hearings on April 8 after the Easter recess.

Additional hearings will be held on April 10, 11, 15, 16, and 17. The witness lists for these days will be announced later.

I would like to welcome our distinguished colleague, the minority leader, Bob Michel, and I would like to say first, Bob, that the introduction of the Trade Partnership Act shows that trade is truly a bipartisan issue. We certainly appreciate working with you and having the opportunity to hammer out our trade difficulties so that we can reduce the $150 billion deficit that faces our country today.

So with that, I want to give you a very, very warm welcome and ask you to proceed with your remarks.

STATEMENT OF HON. ROBERT H. MICHEL, MINORITY LEADER, U.S. HOUSE OF REPRESENTATIVES, AND A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. MICHEL. Mr. Chairman and members of the committee, I appreciate the opportunity to testify on the trade issue. It is perhaps one of the most complex and potentially explosive issues facing the Congress.

It seems that every time you reach agreement on one aspect of the trade picture, two others pop up. With each individual issue we find that one Member's porridge is another's poison. The sentiments are certainly diverse and the views on all sides strongly held.

While these circumstances present many problems for you, they also present us with many opportunities. We have the great opportunity to bring the members of this committee and the Members of the House together on comprehensive trade reform legislation that could stand to benefit all of our constituents.

We cannot consider the textile worker in North Carolina without considering the farmer in Illinois or the lumberjack in Oregon, all of whom have diverse interests and needs.

For instance, in my home district of Illinois, I have Caterpillar workers who rely on exports for their jobs; I have steel workers who are concerned about how imports affect their jobs; farmers who need open markets in order to sell their products; and ethanol producers who are concerned about cheap imports coming in from Brazil. In other words, it is readily apparent we cannot go too far to protect one group of workers for fear of damaging another.

I should note that trade in my district is affected to a great extent by the exchange rate of the dollar compared to other currencies. The recent improvement in the dollar/yen ratio, for instance, cannot help but have a positive effect on the competition between, for example, Caterpillar and Komatsu of Japan. We already know that Caterpillar has improved its European sales as a result of the decline in the dollar compared to European currencies.

Our trade picture is bound to get better as the change in exchange rates begins to have an impact in the marketplace but we must be extremely careful in crafting trade legislation that we not negate the benefits resulting from an improved exchange rate. Protectionist legislation on our part could lead other nations to counter with protectionist legislation of their own. This would only result in a worldwide trade war that would benefit no one.

We must consider these many trade issues as one, for the good of the entire Nation, in the context of our obligations and interests worldwide. We must rise above purely parochial concerns, and I say rise above them, not ignore them, to create a trade package in the House that satisfies a national need.

I said we must not ignore parochial concerns, but let me implore you, all of us, to ignore partisan political concerns. Turning trade into a partisan tool of Republicans or Democrats will in my mind destroy our ability to produce a decent package. It will hurt the economy of the Nation. It will shatter our credibility and relationship with our trading partners, and it will embarrass this House.

As the Republican Leader, I can tell you that House Republicans are ready to go to work on a bipartisan bill. Members of our leadership have expressed a willingness to spearhead such an effort, and I will do whatever I can to facilitate bipartisan discussions. The minority members of this subcommittee are among the brightest, experienced, and savvy Members we have on our side. Their contributions to trade legislation in the past have been substantial and they stand ready to produce a bipartisan agreement.

Bipartisanship, however, does not mean simply ratifying a Democratic trade package developed in a Democratic caucus. It means Republicans and Democrats working together at the outset, when the initial drafting begins, at the committee, subcommittee, and staff levels. So far, this apparently has not exactly been the case.

I would hope that the proposed Democratic trade package released the other day represents a starting point for discussions, and not a fait accompli. If it is the former, then we stand willing to work with the majority in an effort to develop a responsible bill

that we can all support. If the latter, then we have no alternative but to go in our own direction.

As you know, we worked diligently on our side last year to fashion a comprehensive trade bill. H.R.3522, the Trade Partnership Act, is a portrait of the many sentiments of Republican Members of the House. How better can I demonstrate that than to tell you that the 130 cosponsors include both Phil Crane, the distinguished ranking member of this subcommittee, and Jim Broyhill, the distinguished ranking member of the Energy and Commerce Committee, both of whom hold divergent views on trade issues.

We demonstrated in the drafting of H.R. 3522 that this House can indeed produce a consensus on trade issues. I doubt that the divergence of views is any more broad on the majority side than it is on the minority side of the aisle. Consensus is possible. Consensus is probable if we work together in the true sense of bipartisan cooperation.

H.R. 3522 was crafted to reflect a national view on our side. It was also crafted to serve as a point of departure for compromise in this subcommittee or on the floor.

We concentrated on the key areas of trade law enforcement, trade and market expansion and stepped-up negotiations, including the convening of a new round of Reagan GATT talks. We did not ignore economic assistance to displaced workers, nor did we ignore the need for incentives for research and development of new products and services.

We recognized that the legislative branch of Government cannot be established as the final adjudicator of trade issues, just as we cannot allow the executive branch to do nothing, or fail to give them the tools needed to do a great deal.

We have provided the executive branch with new tools with which trade laws can better be enforced, and trade abuses can be stopped. Some of these tools they prefer we not give them, but that is for us to decide.

I am not going to get too deeply into the particulars of our bill. I know that you are familiar with it. I would simply urge that the subcommittee give our bill the same consideration as the Democratic proposal, and that true bipartisan efforts be undertaken to develop a compromise or consensus bill we can all support.

That is the thrust of my statement, Mr. Chairman.

Mr. GUARINI. Thank you, I think the clarion sound for bipartisan support is certainly important. I hope we will be more successful in bipartisan support than we are in foreign policy. But nonetheless, I notice that the bill you have, and the committee draft outline and the bill that I have put in with Mr. Duncan, the ranking Member of the Ways and Means Committee, H.R.1950, that already has 108 cosponsors, have very much the same things in common.

We want to reform our trade remedies to fit the realities of our times, particularly sections 201 and 301 and put in some targeting, and also have the faster act on subsidies which is one of our pressing problems.

We would like to strengthen the STR which I believe your bill calls for, strengthen his negotiating authority and allow him to make final decisions in 301 cases. We have a great deal in common there.

Also, having a national strategy for trade. One of the plans that I notice in the three bills that are very close to each other, calls for a report to be made to Congress every year as to where we are going in trade, and what our policies are. Do you have any problems with that at all, Mr. Michel?

Mr. MICHEL. I certainly do not. There have been discussions in our own administration, for example, in an effort to develop the means by which we can elevate this issue to the front burner. There has been a proposal that the Department of Commerce be turned into a Department of Trade. We are at that juncture where we have to be thinking more internationally every day. I have no problem with that whatever.

Mr. GUARINI. Also, of course I notice that the committee draft does not have a section for interim relief on injured industries. Your and my bill have that in so there is injunctive relief, an industry doesn't have to wait 2, 3, or 4 years before the time they get program relief.

I would like to commend you in that area.

Mr. MICHEL. That is one of the frustrating things out there, all these extended time delays. When we had these consultations in-house among our members, it became absolutely imperative that we include such a provision in our bill to have wide acceptability.

Mr. GUARINI. That seems to be a logical way to go.

In regard to authority for the new round of GATT, is there any problem that you would have in the authority being granted to the President this year by Congress? I understand there is a question of agreement on to when the authority should take place.

Mr. MICHEL. I guess I take the view the sooner the better we get started on anything. At this juncture I have to tell you frankly that as the Republican leader and a strong supporter of the President, that we have had a deficiency in our own administration in moving this thing along. My interest in this thing goes back as much as 2½ to 3 years when I was trying to light a little flame down there in that big thing called bureaucracy, and in the White House itself.

Frankly we have been frustrated for some time.

So I have no problem talking about the sooner the better—though, or course, that is all given to compromise in the end.

Mr. GUARINI. We recently came back from a retreat with the committee in Florida where we discussed on a bipartisan level these trade issues, and how important it is to work together. We got the input and expertise that we brought with us. Many of them thought that macro economics would solve everything. Do nothing and the problem will solve itself.

I am sure Caterpillar never felt that way, but rather that there was a monetary side, key issues such as trade remedies, reform, et cetera.

There is one issue which I wonder what your thoughts are and that is on trade adjustment assistance. We have not been giving any of it out lately, and that has to be with Gramm-Rudman an item suffering considerably.

On trade adjustment assistance, do you think a separate area should be set aside for trade or should it be part of an overall national program with any industry that is hurt or displaced?

Mr. MICHEL. I think I am not altogether sure that what we have done in the past has worked. There have been inequities, serious ones, where we can look at the benefits that accrued to one particular section of the country while another pretty closely attuned so far as severity of the problems is concerned, is left out of the picture. I am not altogether sure how you deal with that, but there have been some serious inequities in the past.

I would be the last to say that the operation of that program has been perfect in its operation and administration. Those of you who are the specialists in that area, I would hope you would deal with that intensely and give us some alternatives.

Mr. GUARINI. I thank you for your thoughts. I would like to turn to Don Pease to ask his questions.

Mr. PEASE. Thank you, Mr. Chairman.

Welcome, Bob, I am glad to have you here before the committee. I think you have given us an almost customarily thoughtful statement on the subject of trade. I would want to endorse heartily the comments you made about the brightness of the minority members of this subcommittee, particularly present company with us here today.

I think it is well for you to make a bipartisan call, certainly the country will be better off and so will the Nation, so will Congress, if we can develop a bipartisan package and use this as a vehicle for reform without using it to the advantage of either party on either side.

I would commend you to the package of trade legislation you introduced in behalf of minority Members of the House last fall. I thought that was a very responsible approach.

It has got a lot of good ideas and I hope that we can integrate them into, with some of ours into a package.

One thing that I would like to ask you about, I think I know your answer but I would just like to ask you.

There has been a lot of concern to the reconciliation bill recently that the Senate really turned over its mandate to the Office of Management and Budget in that the House was negotiating as much with OMB as it was with the Senators.

Obviously as the minority leader you have a responsibility to be attuned to the needs and position of the administration but I know that there are some divergencies between what the administration may want and what minority Members of the House may want.

To what degree would you feel constrained to represent the administration as we go through the negotiating process to put together a trade bill and to what degree do you expect that you and other minority Members will act independently of the administration?

Mr. MICHEL. Well, first of all, one of the reasons I have underscored the need for bipartisanship is that the President, of course, has the power to veto whatever we do. I guess I always operate from the premise that if we devote all this time and effort through extensive hearings and debate and markup, it is foolish to have it all go for naught just to have a political issue. I don't think that serves the process well.

I know that within some quarters in the administration, the specifics of what we propose rub some people the wrong way, but it

does get their attention from time to time instead of allowing them to just sit on the thing and assuming that nothing is wrong.

Now, I am very grateful for the fact that Clayton Yuetter, our new Trade Representative, takes a much more positive view of trying to work with us. That is nothing against his predecessor because I have all the utmost respect for Bill Brock, too.

I think what we have here is a realization on the part of the administration that it ought to be thinking more about trade than it has in the past, because it has been receiving messages and vibrations to this effect from Members of Congress on both sides of the aisle. We will continue to do our darnedest to convince our people that some of these things have to be done.

Mr. PEASE. That is very encouraging. I join you in being an admirer of Clayton Yuetter and I was just as much an admirer of Bill Brock before him.

I think Bill is doing a fine job at the Department of Labor.

Mr. MICHEL. Absolutely.

Mr. PEASE. There are as you know within the administration a lot of divergent views and there are people like I think Ambassador Yuetter and Bill Brock, both who tend to look at problems from the practical point of view. There are others in the administration who are more ideological in orientation, and I guess what I am concerned about is that we write a trade bill that is practical and responds to the concerns of Americans and not too much to some ideological purity of free trade or whatever.

I sense from your response that you are inclined toward the practical point of view and that encourages me a good deal.

Thank you. We really appreciate it.

Mr. MICHEL. I think our constituents from time to time force us to be pretty darn practical.

Mr. GUARINI. Thank you, Mr. Pease.

Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman.

Bob, it is great to see you here. I don't think you have been to the Ways and Means Committee in all the years I have been here until this year. You have been here twice on trade. It is obviously something that is important to you and the Republican conference and we sure welcome your efforts here.

Don Pease was inquiring of you because it is quite obvious that Congress has a different attitude on how to resolve trade problems than the administration does. There are basic philosophical differences. You responded, I think, wisely by saying that there is no point in going through all this if we cannot get a bill in the long run. I think we have to be attentive to some of the most vigorous objections of the administration.

It is going to keep Congress from doing some things that Congress wants to do. On the other hand, the administration is undoubtedly going to be forced to do things that it would prefer not to do under other circumstances.

Yesterday in this committee some of the things the administration thought were important was rejected. So I guess the thrust of my comment is that when Mr. Pease asked you for your bipartisanship you asked for some right back from him.

Mr. MICHEL. Yes. Well, that is true. We have to work together in this thing and if we do I think we can show some positive results in the end.

Mr. FRENZEL. One further thought. The international trade meetings that are taking place and will shape the world's trading system are beginning to take place culminating in what we hope is another GATT round. In my judgment the most important of these meetings is the summit in Tokyo and any of the annual summits.

This administration with whom you counsel regularly has never taken its trade representative to those summit meetings, although usually the most important subjects discussed at those meetings are matters of international economics and centering around specific trade problems.

Would you think it wise to suggest to the President that he take his trade counselors with him when he goes. Obviously this committee also has an interest in Secretary Baldrige who also does not go to those summits.

Mr. MICHEL. Well, I guess I must just confess that I am appalled that we don't do that. I just think it is absolutely essential and imperative if it is going to be all that meaningful.

Mr. FRENZEL. Would you be willing to carry at least this Member's and maybe this committee's suggestion to the President that it would be a good idea?

Mr. MICHEL. I surely will. Absolutely.

Mr. FRENZEL. Participation is sharply limited, there are just a small number of people that can go.

Mr. MICHEL. Right.

Mr. FRENZEL. Because they are too big anyway. But I would think we would be able to find a couple of cookie plate passers we could to leave at home and take our trade advisers instead.

Mr. MICHEL. It may be, you know, as you suggest, how far do you go in that supporting cast? That presents a problem from time to time and maybe they end up speaking with multiple voices that tend to give a clouded picture.

But none of us, none of us including the President himself, are omnipotent and knowledgeable around here on every subject. Particularly when we get to breaking it down to these specifics we need the kind of expertise and backup support that normally you find among this coterie of individuals.

That would surely be one of the points I would be more than happy to talk with the President about.

Mr. FRENZEL. Thank you.

A final thought, the Republican trade bill which you introduced extends beyond the jurisdiction of this committee.

Mr. MICHEL. Yes.

Mr. FRENZEL. As I understand the Speaker's intention, it is to accept pieces of the trade bill and marry them in the Rules Committee in some fashion and may we assume that you are going to be promoting this document in other committees as well where the jurisdiction lies?

Mr. MICHEL. Naturally, the optimum would have been to be able to do it within one committee. I think we find our efforts around here in a number of areas frustrated by sequential referral to dif-

ferent committees and then having that protracted delay that just automatically comes as a result.

But from a very practical point of view, to do the specific things we want to do, we have to take these other committees into account. Let's face it, however, your committee here is the lead committee. That is your normal area of legislating beyond taxes and all the rest.

So this has got to be the frontline committee and then there has to be a supporting cast in my judgment out there and we will do our best to try to help pull it together.

Mr. FRENZEL. We appreciate your help. Thank you for your testimony.

I yield the balance of my time.

Mr. GUARINI. Bill Archer.

Mr. ARCHER. Bob, I want to join the rest of my colleagues in welcoming you before our committee and thank you for coming here and highlighting this very important exercise which I hope, as you, and I think all the members of the committee, can be a bipartisan one.

When we talk about philosophical purism I don't really think that is what is at stake. I think you adequately pointed out in your testimony that we are concerned about all of the interests of the United States of America, not just one particular section, and we have to consider all of that, and we have to consider also what is going to happen in the rest of the world because we are interrelated to the rest of the world.

So it is a pragmatic exercise. Hopefully with the kind of input and highlighting that you have given us today, we will be able to meet these changing times and come up with a package that can be a bipartisan one and I agree with my friend from Minnesota that the administration is a player in all of this. It behooves us in particular, you in particular, to be a liaison with the administration so that we can come out with a final package. I just wanted to make those brief comments and thank you for coming to the committee this morning.

Mr. GUARINI. Bob, there is one thing that I wanted to point out in your bill where you mention Customs personnel to enforce our import laws. I just wanted to remind you that we have cut back considerably on our Customs personnel, not only this year but next year also. I understand that there are 770 unfilled jobs that will go by the boards this year, and the same number net year if the cuts continue to go into effect.

Having come back from hearings at the border I can assure you that 2,000 miles of border we have that is uncontrolled that is allowing ungodly amounts of narcotics to come across, it doesn't control the illegal aliens and the Customs duties themselves are additional reasons why we have to do something with our Customs to get more personnel as your bill points out and not less.

I would just like to ask you to comment.

Last, on the fact that in our society labor and Government and industry seem to be pulling apart all the time. We have learned from the MITI over in Japan that they can cooperate.

In the resolution of your bill, you call for a stressing of a partnership, that we work together as a team. I would like you to just

articulate that for the moment, because I think it speaks for itself and we should do more of that.

Mr. MICHEL. This is my 30th year in the Congress, and when I first came to Washington one of the big burning issues of the day was repeal of the Taft-Hartley Act.

In that battle, of course, we found militant forces on the part of big labor and big industry going at each other tooth and nail, with Government itself probably being decried by both in some measure. I guess, if there is one thing the Japanese have taught us, and have been so adept at doing, is that instead of all three parties warring between themselves and with one another, they should be pulling together.

I am happy to say that in these last few years, particularly as I look at my home State, there is increasing recognition that what you have to do to help a factory or other business is to break down inhibitions and impediments, or walls that have been built up, artificial, or whatever. The way you do that is getting around the conference table with these divergent forces of business, industry, and Government and seek to work together.

Mr. GUARINI. We certainly need a new cooperative effort.

Mr. MICHEL. I don't see any other way out of it.

Mr. GUARINI. I agree with you, it is just not a matter of Congress getting its act together, it is a matter of our entire Nation, business, labor, and the communities getting together with Government to work as a team.

Phil Crane has joined us and I would like to ask him if he has any questions or comments.

Mr. MICHEL. I would like to let the gentleman from Illinois know that before he arrived, I had made some comments to the effect that when you can get a Phil Crane and a Jim Broyhill on a trade issue subscribing generally to some of the same principles, it shows what we on our side at least attempted to do by way of bringing diverging forces together to craft something that we could all give general support to. A cooperative spirit of this sort in the interest of bringing both sides together here in this committee and on the floor of the House is in the end going to get us much further than just a partisan exercise that forces the President in the end to simply veto the legislation.

I don't think we want to go through this dramatic exercise without getting the results in the end.

Mr. GUARINI. Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman.

I apologize to my distinguished leader, I am sure he had eloquent testimony based upon the remarks he made when we introduced the Republican trade bill last year and, as he indicated, we achieved a remarkable degree of consensus on our side of the aisle.

I just want to add perhaps maybe one thing, Bob, to what you may have said already, and it was something that came out of yesterday's newspaper. The fact of the matter is that the debtor nations of the world have significantly reduced their imports of course from the United States and a part of that was the result of IMF insistence that to qualify for loans they had to virtually put up the tariff walls, they had to try to maximize exports and in some areas at least, Thailand being one, there was a suggestion

that the IMF tried to pressure Thailand into debauching its currency so as to have that advantage vis-a-vis the dollar.

In looking at the total dollar amounts of lost exports in these debtor countries, taking just the seven, we lost a greater percent of export market just as a result of this debt condition worldwide than Under Secretary Smart said we could get if we had total free trade worldwide.

He said that total free trade would only reduce our trade deficit somewhere in the neighborhood of 10 to 20 percent maximum.

I think we have to recognize that this is a problem a lot more complicated than just restrictive trade practices where they do exist. That is a component of the problem, but frankly it is one of the lesser components and maybe our distinguished chairman made reference to that seminar we had in Florida. There the faculty was of one mind that the biggest problem to address is the deficit; second, ideally, we should structure a tax code that rewards savings and provides incentives for investment.

I just want to express my appreciation for your being here. I apologize for my tardy arrival.

Mr. GUARINI. We thank you for your leadership and input, Bob, we thank you very much.

Mr. MICHEL. Thank you, Mr. Chairman. You have an excellent array of witnesses following on as I observed, and I look forward to your assimilating all that and in turn helping those of us who are going to share some of the role and responsibility around here in leadership positions.

I understand, Jim Wright, my counterpart in a sense on the other side, and others are trying to craft something we can make fly around here. Thank you.

Mr. GUARINI. Thank you very much.

We call our colleague, the Honorable Tommy F. Robinson, a Member of Congress from Arkansas.

STATEMENT OF HON. TOMMY F. ROBINSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. ROBINSON. Thank you, Mr. Chairman.

If holding the seat once held by Wilbur Mills was not a tough enough act in itself to follow, following our distinguished minority leader after his speech on the floor yesterday is probably going to make my testimony seem a little boring.

But I will try to do the best job I can in the short period of time that you have allowed me this morning.

I also want to thank you sincerely for allowing me these few moments to present my views on the bill that I have introduced.

Mr. Chairman, members of the committee, the subject and scope of this series of hearings is of great importance to this Nation, not only in economic terms but also in terms of relations with our foreign trading partners. Our foreign trade relations are an integral part of our foreign policy, yet have not been accorded the proper attention in my opinion.

Development of a cohesive, coherent trade policy is long overdue. The attempt of this subcommittee to make sense of the hundreds of trade bills that have been introduced in the 99th Congress is a be-

wildering and complex undertaking. In reviewing the discussion draft of the trade policy reform, I was particularly pleased to note that objectives the United States should pursue in a new round of GATT talks.

At the same time I was struck by the continuing absence of one aspect of the trade crisis that has been largely overlooked. And that is the labor aspect.

Last fall, Mr. Chairman, I introduced the Fair Trade Wage Act, H.R. 3487. In simple terms it is a "people" bill. In 1984, 43 plants in my State of Arkansas announced they would close. And the blight is not limited to Arkansas. The stark fact is that millions of people across this country have lost their jobs, have lost their ability to support a family, and have lost their pride as productive members of the community.

Why?

They are losing their jobs, not because we are in a recession—we are not—not because interest rates are high—they are not—not because consumer demand is weak—it is not—but because their factories have been shut down, packed up, and moved to other parts of the world.

Mr. Chairman, I was shocked several weeks ago to have delivered to me a letter from a citizen and manufacturer in the State of Arkansas from our Commerce Department in which they encouraged him to move abroad. I would like to quote from his letter.

> If U.S. producers are to compete successfully at home and abroad, they must adapt their production and marketing efforts to meet the economic challenge of their competition. In some cases this necessitates adjustments such as the transfer of manufacturing facilities to foreign countries where production costs, primarily labor, may be less expensive.

This letter was signed by Timothy Hauser, Director of the Office of Multilateral Affairs, U.S. Department of Commerce.

I wanted to read that into the record, because that gets right to the meat of my bill. The bill that I have introduced has been cosponsored by many of our colleagues, not the least of whom are Austin Murphy, subcommittee chairman in Education and Labor, Parren Mitchell, chairman of the Small Business Committee, and Charlie Rangel, a distinguished member of this committee.

My bill in effect would stop exportation of many of these jobs.

One, it would ban U.S. companies from importing into the United States products they manufacture using foreign workers paid less than the U.S. minimum wage of $3.35 an hour.

It is a well-established precedent that when international activities of a U.S. corporation have a domestic impact, they can be subject to U.S. law in such areas as taxation, securities, antitrust, environmental protection and consumer health and safety. Our historic commitment to a wage floor is threatened when multinationals dip into labor pools where average earnings are $1.20 an hour, as they are in Brazil, or $1.32 as they are in South Korea. If the multinationals cannot respect that commitment, then they do not deserve access to our markets.

Second, Mr. Chairman, it would require U.S. companies to pay into a new fund, the difference between what they pay their foreign workers making U.S.-destined products, and what the average U.S. wage in the same job would be. This payment, called a "wage

parity fee", will offset any incentive to abandon American workers for cheap foreign wages.

We would use the moneys collected in the fund to: One, retrain and otherwise assist U.S. workers whose jobs have been exported; two, provide State export-finance agencies with low-cost export financing for small- and medium-sized business.

It would remove provisions of our present tax laws which actually encourage U.S. companies to shut down here and move abroad. Specifically, the act will deny U.S. taxpayers the right to take any Federal tax deductions for depreciation on "substitute facilities," real or personal property used by the taxpayer abroad to manufacture substantially the same goods as were made in a U.S. plant which was closed or curtailed within the past 5 years.

It will also require that the heavily depreciated basis of the former U.S. plant be transferred to the substitute facility, and would deny the foreign tax credit for any taxes paid to a foreign government based on income derived from a substitute facility. These tax amendments insure that American taxpayers will not have to subsidize the export of America's productive capacity—and jobs—anymore.

Mr. Chairman, at the same time I talk about my bill, I would like to draw attention to a proposal put forward in the other body by Senator Baucus last November 13. In brief, Mr. Baucus calls for the International Trade Commission to conduct a study of the wage rates, labor costs and other labor practices of each foreign country which had a surplus of more than $40 billion in their balance of trade with this country.

The study would also encompass labor practices in those countries and in the industries in those countries that were responsible for that trade surplus.

I think the impact of my proposed legislation dovetails nicely with this proposal made in the other body. Rather than go into further detail, I submit for inclusion in the committee hearing record the appropriate citation from the Congressional Record.

Mr. Chairman, I am not an expert like you and the members of this committee in trade and taxation, but I do know that our workers in this country and our families are hurting like hell.

I think it is high time that we develop a trade policy that is specifically concerned with the total family. It almost seems to me in that we in Congress focus more on the troubled families. But I am concerned about hard working, honest Arkansans that are being destroyed by exportation of jobs from my State, as well as from other States in this country.

I thank you for the opportunity to present my testimony this morning.

[The prepared statement follows:]

STATEMENT OF THE HON. TOMMY F. ROBINSON
BEFORE THE SUBCOMMITTEE ON TRADE
MARCH 21, 1986

Mr. Chairman, I would like to express my thanks to you for the opportunity to present testimony before this distinguished subcommittee. The subject and scope of this series of hearings is of great importance to this nation not only in economic terms, but also in terms of relations with our foreign trading partners. Our foreign trade relations are an integral part of our foreign policy, yet have not been accorded the proper attention.

Development of a cohesive, coherent trade policy is long overdue. The attempt of this subcommittee to make sense of the hundreds of trade bills that have been introduced in the 99th Congress is a bewildering and complex undertaking. In reviewing the discussion draft of the trade policy reform, I was particularly pleased to note the objectives the United States should pursue in a new round of GATT talks.

At the same time I was struck by the continuing absence of one aspect of the trade crisis that has been largely overlooked. And that is the labor aspect.

I am familiar with the general intent of the relief to workers provisions of Mr. Pease's trade bill, H.R. 3668. And while I applaud the steps outlined and view their adoption as a leap forward, I believe we need to go further.

Last fall, I introduced the Fair Trade Wage Act, H.R. 3487. In simple terms it is a "people" bill. In 1984, 43 plants in my state of Arkansas announced they would close. And the blight is not limited to Arkansas. The stark fact is that millions of people across this country have lost their jobs, have lost their ability to support a family and have lost their pride as productive members of the community.

Why?

They are losing their jobs, not because we are in a recession (we're not)...not because interest rates are high (they're not)...not because consumer demand is weak (it's not)...but because their factories have been shut down, packed up and moved to other parts of the world.

And this exporting of jobs is being done in part by our own multinational corporations who seek foreign labor at cheap wages. I was startled to read a Washington Times article from March 5, 1986 quoting that respected publication "The Economist" which stated:

> Roughly 35 to 40 percent of America's imports and exports moved within American multinational companies in 1977-80, according to a new study by the Federal Reserve Bank of Boston. The Commerce Department's latest survey of multinationals show that these companies total trade accounted for 77 percent of America's exports and 50 percent of its imports in 1982. That was lower than in 1977, when they accounted for 84 percent of exports and 58 percent of imports, but in recent years the proportion has certainly risen

again as companies have responded to an overvalued dollar by shifting production and suppliers offshore.

It is in this "shifting" that the loss of American jobs occurs. And our current tax code encourages and rewards those companies that close up shop and move those jobs overseas. I believe it is time we stop subsidizing the export of American jobs.

That is why I introduced the Fair Trade Wage Act which confronts our international trade crisis from the American worker's point of view. The message underlying H.R. 3487 is simple: Fair trade begins at home. Its method is straightforward: Remove any incentive for U.S. companies to abandon U.S. workers for cheap foreign labor.

The Act will:

—Ban U.S. companies from importing into the United States, products they manufacture using foreign workers paid less than the U.S. minimum wage of $3.35 an hour. It is a well established precedent that when international activities of a U.S. corporation have a domestic impact, they can be subject to U.S. law in such areas as taxation, securities, antitrust, environmental protection and consumer health and safety. Our historic commitment to a wage floor is threatened when multinationals dip into labor pools where average earnings are $1.20 an hour (as they are in Brazil) or $1.32 as they are in South Korea. If the multinationals cannot respect that commitment, then they do not deserve access to our markets.

—Require U.S. companies to pay into a new fund, the difference between what they pay their foreign workers making U.S.-destined products, and what the average U.S. wage in the same job would be. This payment, called a "wage parity fee," will offset any incentive to abandon American workers for cheap foreign wages.

—Use the monies collected in the fund to: (1) re-train and otherwise assist U.S. workers whose jobs have been exported; and (2) provide state export-finance agencies with low-cost export-financing for small & medium sized business. Trade adjustment assistance is a matter of survival to a growing number of Americans. It is time to make the job exporters pay for the economic damage and disruption they cause. In addition, as a member of the House Small Business Committee I also recognize the chronic difficulty our small businesses face in obtaining low-cost short-term financing and export subsidies that their foreign competitors enjoy. Many states have created assistance programs for small exporters, but in the wake of chronic revenue shortfalls, such programs are among the first to have funding slashed.

—Remove provisions of our present tax laws which actually encourage U.S. companies to shut down here and move abroad. Specifically, the Act will deny U.S. taxpayers the right to take any federal tax deductions for depreciation on "substitute facilities" (real or personal property used by the taxpayer abroad to manufacture substantially the same goods as were made in a U.S. plant which was closed or curtailed within the past five years). It will also require that the heavily depreciated basis of the former U.S. plant be transferred to the substitute facility, and would deny the foreign tax credit for any taxes paid to a foreign government based on income derived from a substitute facility. These tax amendments insure that American taxpayers will not have to subsidize the export of America's productive capacity — and jobs — anymore.

Mr. Chairman, at the same time I talk about my bill, I would like to draw attention to a proposal put forward in the other body by Senator Baucus last November 13. In brief, Mr. Baucus calls for the International Trade Commission to conduct a study of the wage rates, labor costs and other labor practices of each foreign country which had a surplus of more than $4 billion in their balance of trade with this country. The study would also encompass labor practices in those countries and in the industries in those countries that were responsible for that trade surplus.

I think the impact of my proposed legislation dovetails nicely with this proposal made in the other body. Rather than go into further detail, I submit for inclusion in the committee hearing record the appropriate citation from the Congressional Record.

Mr. Chairman, members of the Committee, I look forward to expanding the congressional debate on international trade to include the proposals embodied in this legislation.

Mr. GUARINI. Thank you very much, Tommy.

Mr. Archer.

Mr. ARCHER. I just want to thank our colleague for coming before the committee. I have no questions.

Mr. GUARINI. Mr. Crane.

Mr. CRANE. Thank you for the testimony, Tommy. I have just one question. How about a foreign-based company like United States Mitsubishi, say, that opens a subsidiary here in the United States. Would it suddenly, because they had the subsidiary here in the United States, come under these provisions?

Mr. ROBINSON. No, my act only deals with U.S. companies that are closing down their plants here and exporting their facilities overseas to take advantage of new depreciation and cheap labor. In my opinion there is no way we can control foreign multinational companies. I am talking about U.S. companies, U.S. multinational companies that should respect the wage rates of our workers. These companies have used our workers up over the years, and they have taken advantage of all the tax breaks and they just simply close the plants down, move overseas to take advantage of another depreciation schedule and cheap labor and export those products back into the United States.

I did not read all of my statement, but it included an article from the Washington Times quoting the respected publication "The Economist." You may wish to read that later. It sums up what I am trying to present to this Congress.

Mr. CRANE. What would prevent an American-owned company from simply packing up and creating an incorporation abroad and retraining officially subsidiaries here.

Mr. ROBINSON. I think if they did that they would be violating the spirit and intent of this legislation if it were passed.

Mr. CRANE. I have an uneasiness that a lot of them would be calculating how to accomplish that in a hurry.

One thing you did advocate in your testimony where I agree with you wholeheartedly is eliminating the adverse regulations here that put pressure on American companies to go abroad.

I am thinking specifically of the pharmaceutical industry because of our FDA requirements, it takes us about twice as long to get drugs approved and on the market in the U.S. market whereas foreign countries have their own standards, but they cut approval time roughly in half.

FDA insists if the drug is here, until it is FDA-approved, even if it is meeting the foreign standards, you cannot export to those foreign markets.

The pharmaceutical firms have no alternative but to open up foreign subsidiaries and manufacture them abroad.

So the same would be true of the Consumer Product Safety Commission.

I think you have made a good recommendation in the examination of some of this adverse regulatory activity that is creating those pressures. The only other point I would make is the reference I made earlier when Bob Michel was testifying on the loss of the export markets because of the world debt problem, the estimates they gave in testimony at that hearing was a loss of 1.6 million domestic jobs because of it.

So we can hope and pray they get their houses in order, too. That will help us.

Thank you for testifying.

Mr. ROBINSON. Well, thank you for your questions.

Mr. GUARINI. Thank you very much, Tomm[illegible] is a very difficult area as you know. Your thinking is very or[illegible]al and we want to thank you for the benefit of your thoughts a[illegible]our testimony.

Mr. ROBINSON. Thank you very much, Mr. [illegible]hairman.

Mr. GUARINI. The United States Chamb[illegible]of Commerce, Frank L. Morsani, chairman of the board; Trade I[illegible]rm Action Coalition, Marvin R. Wortell, chairman of Triton Inc[illegible]ries, accompanied by Ilona M. Hogan.

We welcome each of you.

And if you want to proceed, Mr. Morsan[illegible] your statement will be put into the record. Perhaps you want t[illegible] roceed with whatever your comments are.

STATEMENT OF FRANK L. MORSANI, CHA[illegible]MAN OF THE BOARD, U.S. CHAMBER OF COMM[illegible]RCE

Mr. MORSANI. Good morning. Thank you, [illegible]Ir. Chairman.

I am Frank Morsani, of Tampa, FL, chair[illegible]an of the board of the Chamber of Commerce of the United States.

Since the early part of this decade, our N[illegible]tion has faced unprecedented merchandise trade deficits, which [illegible]eached the staggering total of nearly $150 billion in 1985. Unders[illegible]ndably, the Congress and the administration have been faced wit[illegible] vociferous protectionist demands, the likes of which have not [illegible]een seen in over 50 years, when the ill-conceived Smoot-Hawley [illegible]ariff measure was enacted. As we begin this process, I hope none o[illegible] us forget that.

Last June, I testified on the growing cla[illegible]or for protectionism before a House Banking subcommittee. In par[illegible] I said:

> A number of factors have contributed to the rise of p[illegible]tectionism. Uneven economic growth worldwide, high unemployment in some [illegible]reas, volatile exchange rates, and government market intervention, as well as [illegible]navoidable structural changes in the world economy have all fueled dissatisfa[illegible]ion with the current system. But by closing our markets to foreign competition, [illegible]e will bring about results all of us should fear.
>
> If those who call for restriction here and abroad retain th[illegible]offensive and obtain the market-closing policies they seek, we will risk a worldwide [illegible]llapse of trade that could be worse than the Great Depression of the 1930s. If th[illegible] should occur, the overall health of our relationships with other nations stands to d[illegible]eriorate.
>
> All segments of the American public, including the administra[illegible]n and Congress, as well as business, labor, and academia, must recognize this and [illegible]egin to grapple with this challenge.

As recently as last summer, we felt that the adminis[illegible]ration was a bit hesitant in addressing the trade issue. In fact, we [illegible]rote the President last September 5, urging him to "take whatev[illegible] actions are necessary to restore fairness in the international mark[illegible]place" including the use of section 301 and other provisions of the [illegible]w "to compel corrective trade liberalizing actions by our trading [illegible]artners."

We were the only private organization to publicly call for s[illegible]ch action, and we have been generally pleased with the results sin[illegible]e that time.

Self-initiating a number of 301 cases is a good step in the right direction. USTR Clayton Yeutter has performed well in taking a tough negotiating stance with our trading partners around the world. We support retention of Presidential discretion under section 301 except where trade agreements are violated.

Just last week, I returned from Geneva, where I made a speech on the GATT. In my remarks, I pointed out that while GATT has been successful in reducing tariffs from about 40 percent in 1947 to 5 percent or so today, numerous nontariff barriers and other trade-distorting practices have not received adequate attention. Telecommunications, intellectual property, services, and trade-related investment issues are particularly in need of consideration at the GATT.

Furthermore, the GATT is perceived as weak in its enforcement capabilities, with a resulting lack of confidence in its operation. This undermines much of the progress that has been made through the GATT over the last 40 years.

The chamber believes that the trade negotiations should be seen as part of a larger strategy to strengthen the world's trading system. We recommend that the Congress give the President tariff and non-tariff negotiating authority as soon as practicable in order to strengthen our commitment to the new round of trade negotiations.

Mr. Chairman, it is evident from your agenda that you are quite serious about rolling up your sleeves and getting to work on important trade legislation. Since our founding 74 years ago, we have viewed international trade as vital to our interests and we have regularly stated our views before this committee and others.

For example, in addition to our testimony last June, we also submitted a statement in opposition to the Trade Emergency and Export Promotion Act (H.R. 3035), which calls for a 25-percent import surcharge under certain conditions.

We also testified on trade adjustment assistance before the Senate Finance Committee. Of my three appearances before the Congress, two have been on trade.

There are several thoughtful suggestions for trade legislation which have been included in the administration's program which was announced on September 23, the Report of the House Democratic Task Force on Trade, and the Republican Trade Partnership Act of 1985.

While we cannot endorse any of them in their entirety, each contains some excellent ideas.

Your committee is now considering proposed changes in a number of important trade law provisions: Presidential discretion under section 201 (injury) and 301 (unfair practices); 337 (intellectual property); subsidy and dumping provisions, including those applicable to nonmarket economies; trade adjustment assistance; and Presidential negotiating authority for the next multilateral trade negotiations.

My written testimony discusses all of these issues in considerable detail.

In conclusion, trade law reform, as important as it is to the U.S. international position, is just one of the many factors involved. Exchange rates, the global integration of our financial system, the do-

mestic policies of trading nations, and most importantly, investment in people, our most precious resource, will affect our competitive position as much as anything.

The chamber's theme for this year is "Let's Sharpen America's Competitive Edge." I have included the section on international competitiveness at the end of my written statement and commend it to you.

Thank you for your attention. I will be pleased to respond to your questions.

Mr. GUARINI. Thank you.

[The prepared statement follows:]

STATEMENT
on
TRADE REFORM LEGISLATION
before the
SUBCOMMITTEE ON TRADE
of the
HOUSE COMMITTEE ON WAYS AND MEANS
for the
U.S. CHAMBER OF COMMERCE
by
Frank L. Morsani
March 21, 1986

INTRODUCTION

Mr. Chairman, I am Frank L. Morsani, President of Precision Enterprises, Inc. in Tampa, Florida. I am also Chairman of the Board of the U.S. Chamber of Commerce, which I am representing today.

Since the early part of this decade, our nation has been faced with unprecedented merchandise trade deficits, which reached a staggering total of nearly $150 billion in 1985. Understandably, the Congress and the Administration have been faced with vociferous protectionist demands, similar to those over 50 years ago when the ill-conceived Smoot-Hawley tariff measure was enacted.

Last June, in our testimony on the Growing Clamor for Protectionism before the House Subcommittee on Economic Stabilization of the Committee on Banking, Finance, and Urban Affairs, we said:

> A number of factors have contributed to the rise of protectionism. Uneven economic growth worldwide, high unemployment in some areas, volatile exchange rates, and government market intervention, as well as unavoidable structural changes in the world economy, have all fueled dissatisfaction with the current system. But by closing our markets to foreign competition, we would bring about results all of us should fear. If those who call for restrictions, here and abroad, retain the offensive and obtain the market-closing policies they seek, we will risk

a worldwide collapse of trade that could be worse than the Great Depression of the 1930's. Should this should occur, the overall health of our relationships with other nations stands to deteriorate. All segments of the American public, including the Administration and Congress, as well as business, labor and academia, must recognize this and begin to grapple with this challenge.

Despite the clamor for protectionism from many sources, the only restrictive trade legislation that Congress has passed is H.R. 1562, the so-called Jenkins textile bill, which was vetoed by the President. A vote to override his veto is scheduled for August. Your Subcommittee also has considered natural resource legislation and a telecommunications market access bill, on which we testified last week.

Several thoughtful suggestions for trade legislation have been included in the Administration's program that was announced on September 23, the report of the House Democratic Task Force on Trade, and the Republican Trade Partnership Act of 1985.

In addition to our testimony of last June, we submitted a statement opposing the Trade Emergency and Export Promotion Act (H.R. 3035), which calls for a 25% import surcharge under certain conditions.

As recently as last summer, we though that the Administration was a bit hesitant in addressing the trade issue. In fact, we wrote the President on September 5, urging him to "take whatever actions are necessary to restore fairness in the international market place," including the use of Section 301 and other provisions of the law," to compel corrective trade liberalizing actions by our trading partners." We were the only private organization publicly to call for such action, and we have been generally pleased with his actions since that time.

Self-initiating a number of 301 cases is a good step in the right direction; USTR Clayton Yeutter has done well in taking a tough negotiating stance with our trading partners.

We congratulate you for holding these hearings. The hearing announcement was comprehensive and details much of the problem. The call by the House Democratic leadership for a comprehensive trade bill underlies the urgency of reviewing this issue. We pledge to be of whatever assistance we can in moving this process forward.

Mr. Chairman, I would also note that while your Subcommittee has jurisdiction over a very significant portion of our trade laws, other issues also should be considered. At the end of my remarks is a statement on International Competitiveness, which is part of the Chamber's theme of "Let's Sharpen America's Competitive Edge." I commend this document to you.

I. UNFAIR TRADE PRACTICE LAWS

A. Section 301, Trade Act of 1974

o Transfer of Decision-Making Authority from the President to the U.S. Trade Representative

Several legislative proposals currently pending in the Congress would require the transfer of Section 301 decision-making authority from the President to the USTR. Proponents of this approach maintain that transfer of this authority would remove the various domestic and international political pressures on the President that have tended to undermine effective use of Section 301 authority. They also suggest that the USTR, armed with such authority, could become more effective in dealing with the General Agreement on Tariffs and Trade (GATT).

As noted in our introduction, we agree with the need to use Section 301 authority effectively. The broad range of 301 cases brought against some of the more serious unfair trading practices in Japan, South Korea, Brazil, and the European Community have strongly signaled our trading

partners that we are ready, willing, and able to take tough action under 301 and other provisions of law to safeguard American trading interests.

We do not believe that the proposed transfer of Section 301 authority to the USTR best serves American trading interests. Under current law, the President already has delegated a substantial amount of authority to the USTR to initiate and accelerate 301 actions, as indicated in the President's Trade Policy Action Plan, which was announced on September 23. To suggest that "depoliticization" of the 301 process is a desirable goal indicates a serious misunderstanding of the implications of the 301 process. Effective application of 301 frequently will require political judgment as to what constitutes an "unfair practice."

Section 301 is the most powerful legal weapon in the President's trade remedy arsenal. Both the basis for cause of action and the available remedies are broader than under any other trade remedy statute. Given the broad trade and foreign policy implications of potential 301 actions, decision-making authority should remain with the President.

- o Reducing Presidential Discretion, particularly circumstances in which mandatory retaliation may be appropriate

In general, we object to proposals to reduce the President's discretion with regard to trade policy. The economic, political, and diplomatic environment varies greatly from time to time and from country to country. What may be an appropriate response at one time and place, may not be appropriate in another context.

However, the Chamber does support mandatory 301 action when rights guaranteed under international trade agreements have been denied

(unjustifiable"* action) and (1) the relevant dispute settlement mechanism have expired or (2) a GATT panel has decided in favor of the U.S. position and the specified reasonable time defined by GATT has expired. The Chamber does not support narrowing or reducing current Presidential discretion under section 301 in cases in which there is an "unreasonable"** or "discriminatory"*** practice that is not in violation of an international obligation.

- o Including Export Targeting Practices and Circumstances in Which Retaliation Might Be Required

A major trade issue confronting the U.S. business community is the use by foreign governments of market-distorting practices, such as foreign industrial targeting. The Chamber actively supports the elimination of these unfair trade practices through international trade negotiations and U.S. trade law.

Given the complex nature of the targeting problem, the trade remedy response must be flexible. Section 301 is the most appropriate provision of existing law to seek such a remedy.

Although the definition of "unreasonable" unfair trade practices in 301 was expanded in the Trade and Tariff Act of 1984 in order to address this problem, we believe this definition should be expanded further.

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* Unjustifiable: "refers to acts, policies, or practices which violate or are inconsistent with U.S. international legal rights, such as denial of national or most-favored-nation treatment, right of establishment, or protection of intellectual property rights."

** Unreasonable: "refers to acts, policies, or practices which are not necessarily illegal or inconsistent with U.S. international legal rights but are otherwise unfair and inequitable."

*** Discriminatory: "includes, where appropriate, any act, policy, or practice which denies national or most-favored-nation treatment to U.S. goods, services, or investment."

Definitions of unjustifiable, unreasonable, and discriminatory are from Ways and Means Committee Print, December 4, 1984, WMCP 98-40, p. 57.

We recognize that some practices of other nations might not be per se violations of the GATT or U.S. international agreements; however, when they are combined with practices that are violations, the end result is a "leveraged" market distortion of some magnitude.

We recommend that the definition of "unreasonable" be expanded to include the denial of fair and equitable market opportunities due to (1) infant industry protection and discriminatory government procurement outside the objectives of the GATT and (2) the transfer of technology because of special restrictions imposed for reasons of commercial advantage.

o Circumstances in Which Self-Initiation of Investigations May Be Appropriate

As noted earlier, we generally agree with both the Administration's record of self-initiation over the past several months, and the USTR's Annual Report on National Trade Estimates 1985, which highlighted significant trade barriers of countries with "relatively greater trade interest to the U.S.," focused on areas needing further attention.

Separately, the National Chamber Foundation (an affiliated Chamber organization) is considering a research project which would seek to delineate further raw data problems and general information problems connected with the 301 filings. We hope that this will result in a better and more realistic monitoring program for the filing of 301 cases.

B. Section 337

With intellectual property piracy costing U.S. companies an estimated $8 billion to $20 billion a year, the Chamber is committed to modernizing applicable laws.

The Administration has indicated that it will support legislation to protect U.S. intellectual property rights, including trademarks, patents, copyrights and mask work rights (computer chip designs) along the lines of

President Reagan's speech on September 23, in which he said, "When governments permit counterfeiting or copying of American products, it is stealing our future and it is no longer free trade."

We support efforts to strengthen the rights of American inventors to exclude from the American market products that infringe their intellectual property rights. Section 337 of the Tariff Act of 1930 presently gives the International Trade Commission (ITC) the general power to exclude imports when the importer engages in "unfair methods of competition or unfair acts." The law has been used to restrict importation of pirated products, but the law needs to be strengthened by eliminating the injury test.

The law was not designed specifically to protect intellectual property rights; it requires a complaining party to show that the imports threaten an efficient and economically operated domestic industry with destruction or substantial injury, only then can relief be granted. We support the removal of such an injury test; that the articles infringe a patent or are made abroad by the unauthorized use of a process that is patented here should be sufficient reason for exclusion.

In short, intellectual property owners covered by the bill need not prove that a whole industry is threatened with destruction or substantial injury. Infringement is sufficient injury.

We also support a change in the law that would require the ITC to act promptly on requests for relief pending the final resolution of a complaint. In cases in which a key shipment of infringing goods is en route or a critical selling season is approaching, the failure of the ITC to act promptly inflicts harm on the intellectual property owners that is not easily remedied.

C. Antidumping and Countervailing Duty Laws

o Measures and Procedures to Address and Discourage Persistent Subsidy and Dumping Practices, Including Third Country Markets

The Chamber recognizes the seriousness of persistent dumping and subsidization practices by foreign nations. The U.S. must continue to pursue reduction of such practices through enforcement of multilateral trade agreements and domestic law.

In recent years, concern over indirect dumping and subsidization, i.e., imports containing inputs priced below fair value or subsidized, has increased.

Indirect dumping (e.g., so-called downstream, upstream, and diversionary dumping), the use of inputs by foreign competitors obtained at less than fair value, provides our foreign competition with an unfair cost advantage. Also, the U.S. producer using the imported input must pay a premium (of the dumping margin) that is not exacted from the foreign competitor.

There also have been instances in which, for example, country A will export unfinished goods normally subject to U.S. antidumping duties to a third country B. In country B, those goods are transformed into finished products not yet subject to U.S. antidumping findings. The goods are then exported to the U.S. without being subject to antidumping duties, even though they contain dumped inputs that would have been subject to antidumping duties if exported directly to the U.S.

Although a legislative solution to the problem could be beneficial, the administration of such a law could be very difficult.

To obtain information concerning the pricing of inputs in the foreign producer's market, U.S. companies purchasing inputs from abroad need

access to the pricing practices of their sellers -- which would be difficult. In addition, the sellers are also competitors, it may be illegal for them to obtain such information. The GATT antidumping code authorizes antidumping duties only when a "like product" has been dumped; questions remain whether a finished product and its inputs can be characterized as "like products."

In the case of indirect subsidies, Section 613 of the Trade and Tariff Act of 1984 addresses this issue. The law mandates a finding that a competitive benefit is bestowed when a price differential exists. However, the U.S. Department of Commerce's interpretation and implementation of the law hold that no competitive benefit can ever be found unless a price differential exists. The Chamber believes this ignores economic reality. Unsubsidized competitors of the subsidized producer must lower their prices to meet those of the subsidized producer, and thereby, create price equality or forego that business. Under these economic circumstances, it is axiomatic that the downstream purchaser has received a competitive benefit. Therefore, the U.S. Chamber urges the U.S. Department of Commerce to recognize this economic reality in its interpretation and implementation of the law.

We recognize that it is difficult to measure the extent to which direct subsidies distort trade and to determine if an indirect subsidy even exists. The Administration should pursue the possibility of formulating a sound standard for determining the effect of upstream subsidies on competitive advantage or for establishing the proper differential pricing formula to make a determination and measure the countervailing duty margin.

While we do not endorse any specific proposed legislation addressing the indirect dumping and upstream subsidies problem, we stand ready to offer our assistance to Congress and the executive branch in pursuit of an adequate solution.

o Revision of Standards Applicable to Nonmarket Economies

The U.S. business community generally agrees that our current antidumping duty law regulating nonmarket economy (NME) imports is grossly inadequate. The surrogate country/constructed value approach for

determining dumping from NMEs has created tremendous confusion on the part of government regulators, importers, and domestic industry alike. As our trade with the NMEs grows, the method by which we deal with domestic injury caused by NME imports will become increasingly important.

Section 406 of the Trade Act of 1974, on market disruption caused by Communist countries, also has not been a useful tool in the present import administration process.

We believe that both laws should be replaced by a single new law that is nonideological, i.e., applicable to NMEs rather than "Communist countries".* That new law should provide clearer guidelines as to what constitutes a NME rather than require an annual list of NMEs. The law also should permit an industry or sector within an otherwise NME to be judged market-oriented for purposes of antidumping duty investigations if, for example, that industry or sector is able to function reasonably independently of state control in establishing production levels and product price determinations.

In contrast to most proposals for trade reform, the Chamber maintains that there is no equitable and predictable way for measuring the fair market value of NME imports. As such, the Chamber believes that an injury determination should be the sole requirement for import relief in the case of NME products. As there will be no way to know whether an unfair trade practice exists, the injury standard should be higher than currently is the case under U.S. antidumping law, which relates to unfair trade practices, but lower than the "escape clause" standard of section 201 of the Trade Act of 1974 where there is no unfair trade.

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* A July 1985 ruling of the U.S. Court of International Trade that U.S. countervailing duty law is applicable to NME imports has added a new element of uncertainty to the process. The ruling, which is currently under appeal, overturns an earlier Department of Commerce ruling that the law does not apply to NMEs. If the court ruling is upheld, U.S. countervailing duty law may be another area in need of legislative remedial action.

Under our proposal, if the ITC finds injury, the Office of the USTR would be empowered to negotiate within a reasonable period an arrangement with the NME, through price increases and/or quotas, to remedy the injury. If the USTR fails to reach such an arrangement with the NME, the USTR still would have the authority to recommend to the ITC a remedy for domestic industry.**

II. IMPORT RELIEF AND ADJUSTMENT (Sections 201-203, Trade Act of 1974)

o Transfer of Decision Making Authority from the President to the U.S. Trade Representative

U.S. fair trade laws, which the Chamber continues to support, provide U.S. business and workers with the procedures and authority necessary to obtain temporary relief from injurious increased import competition. This so-called escape clause recognizes that difficult economic adjustment problems for certain trade sectors can result from trade-liberalizing practices and increased import competition. Any changes to these laws should retain the legislative intent of industry adjustment, and the granted relief should be temporary in order to facilitate this adjustment to increased import competition.

The growing interest in and use of "managed trade" -- a term used to describe explicit or implicit deals between or among governments, with or without the participation of private parties, to limit import shares in a given market -- in general runs counter to the United States' interest in an expanding and open world economy. At the same time, managed trade may be a

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** Such procedures are not alien to NMEs. The accession agreements signed by the East European members of the GATT provide that in the event their products are being imported in such increased quantities or under such conditions as to cause or threaten serious injury to a member country, that member country may request consultations to remedy the injury through quantitative restraints, price increases, or other actions. If the two parties fail to reach an agreement, the injured party is free to restrict the other's imports in order to remedy the injury.

practical tool for affording to U.S. industries that have demonstrated injury due to fairly traded imports the temporary import relief authorized by U.S. law and international agreements.

Therefore, the Chamber believes that, whenever possible, managed trade should be employed as a tool of import relief within the confines of the standards and procedures of the two major trade statutes offering relief from fairly traded imports, Section 201 of the 1974 Trade Act (the so-called "escape clause") and Section 204 of the Agricultural Act of 1956.

In all cases of managed trade for import relief from fair trade or for any other purpose, the process leading to managed trade should be transparent. At the same time, the President should request comments on these actions. He also should report on the anticipated overall effect of these results on the U.S. economy.

In all cases of managed trade for import relief from fair trade, the link between such relief and action toward industry adjustment should be improved.

o Trade Adjustment Assistance

In our testimony on Trade Adjustment Assistance before the Senate Committee on Finance on September 17, we expressed a number of concerns.

Given the global structural adjustment, the failure of prior trade adjustment programs, and the lack of nonrestrictive, long-term legislative trade proposals, the Chamber pledges its assistance in forming a more responsive and constructive adjustment policy for America.

The free-market system continues to provide the most economic advances. However, we are well aware of the economic hardships forced upon American workers and businesses by inevitable trade adjustment processes and commend you for your compassionate efforts to lighten some of those burdens. It is particularly significant that many of your efforts cross partisan and ideological lines.

Our membership -- including over 180,000 businesses -- values human resources. We understand that financial capital by itself is not enough to enhance our ability to compete. We face a highly competitive and changing marketplace that necessitates the continuous retraining of the American work force. In fact, U.S. industry invests over $30 billion annually in direct education and training.

The Chamber believes that the U.S. economy would be strengthened by cost-effective efforts to promote the retraining of workers adversely affected by imports and to reduce and distribute more evenly the burden of economic adjustment. Title III of the Job Training Partnership Act (JTPA) is an excellent example of successful public and private partnership. We also believe that these adjustment efforts should not rely on unconditional cash payments or other subsidies.

Presently, the Chamber is continuing to study the issue of adjustment and retraining throughout our organization. We await the results of similar studies by the Office of Technology Assessment, the Urban Institute, and the Institute for International Economics. In fact, under the umbrella of the Chamber, the National Chamber Foundation also is studying the issue.

The Chamber has serious concerns about the proposed use of tariffs or "user fees" to fund trade adjustment assistance. We realize Congress' need for alternative funding sources, given the current budget deficit. However, the proposed "user fee" is a tariff and the Chamber has a long-standing and well-established policy opposing tariffs. Tariffs are inflationary and have an anticompetitive impact on the U.S. economy.

Under Article XIX of the GATT "escape clause" and Section 201 of the 1974 Trade Act, the President may impose duties on imports causing or threatening serious injury to domestic industries producing like or directly competitive products. In addition, the Chamber believes that selective use of Section 301 and other existing law can and should be used to spur trade liberalizing initiatives by our trading partners. However, a unilaterally

imposed general tariff, in our opinion, would exceed the constraints posed under the escape clause and, in fact, undermine U.S. efforts to seek overseas trade liberalization through a strategy of selective response.

For the last 50 years, the U.S. has been in the vanguard promoting the multilateral trading system. To enact law that would unilaterally impose a tariff in the absence of domestic injury or regardless of GATT concerns would undermine the whole GATT process of moving on the basis of consensus. The U.S. must maintain the credibility of the GATT process.

By taxing only imported goods for the purpose of retraining U.S. workers, our trading partners may be able to seek compensation from the U.S. Raising a tariff alters the terms of previously negotiated agreements between countries, and our trading partners likely will seek compensation to restore the balance of concessions.

A tariff also would increase the cost of raw materials and secondary products being imported by U.S. exporters and, thereby, increase their costs. Despite recent improvement in the dollar's exchange value, some U.S. products remain uncompetitive, and any increase in the cost of securing imports will further erode their price competitiveness.

III. TRADE NEGOTIATING AUTHORITIES

The Chamber supports new and dedicated multilateral efforts to reduce barriers and to restore and improve discipline and stability in the world trading system. Our objective is to further a freer, fairer, and more open world economy, encompassing merchandise, service, investment, and technology trade.

The nature of the world trading system has changed, and protectionist actions have increased sharply since the last multilateral trade negotiations were completed in 1979. Import barriers and other trade-distorting practices have multiplied, often nullifying past agreements. New and better solutions, covering a wide range of possibilities, must now be sought.

The Chamber believes that the priorities for these new multilateral efforts are at least sevenfold: (1) to strengthen the disciplines of the international trading system, and to seek further reductions of nontariff and tariff barriers, we must review issues such as Most-Favored-Nation Treatment, permissive customs unions and free trade areas, safeguards, dispute settlement, and government intervention in trade; (2) to examine GATT machinery and the role of its Secretariat in order to improve its performance; (3) to help GATT adapt to the emerging needs of services, investment and intellectual property rights issues; (4) to review the linkages between trade and monetary matters; (5) to assist developing countries to assume a more active and responsible role within the world trading system; (6) to secure maximum public support in order to improve present trading rules and institutions and to provide directions for solutions to other new or yet-to-emerge problems; and (7) to seek renewed Presidential negotiating authority from the U.S. Congress.

The Chamber recommends that the Congress give the President tariff and nontariff negotiating authority as soon as practicable in order to strengthen the United States' commitment to this round and for our trade negotiators to be at the same level as their foreign counterparts.

Assuming that these multilateral negotiations do not conclude for a number of years, it is critical that any trade problems that arise in the interim be resolved through bilateral, GATT Plus, or plurilateral mechanisms and be consistent with the U.S. objectives of the multilateral round.

The GATT is only one part of the broader strategy necessary to enable U.S. business to be competitive. Many macroeconomic conditions affect U.S. competitiveness, e.g., exchange rates, domestic fiscal policy, third-world debt, and proposed domestic tax, antitrust, and regulatory changes. These conditions must continue to be addressed by the Administration and Congress.

- o Alternative Forms of Remedy, Other Than Quotas or Tariffs, Such as Antitrust Relief

In February the Administration announced a legislative package that is largely designed to increase international competitiveness through a significant overhaul of our antitrust law. We support the general intent of three of these proposals: (1) giving the President an option to grant certain U.S. industries found to be injured from foreign competition a five-year exemption from compliance with Section 7 of the Clayton Act; (2) deleting the incipiency standard from Section 7 and requiring that for a merger to be adjudged as offensive to Section 7, a plaintiff must make a showing of "significant probability" that the proposed transaction will be anticompetitive; and (3) empowering courts to dismiss private suits against foreign entities if the exercise of jurisdiction would be unreasonable in light of certain factors.

We commend this Subcommittee for its concern with the competitiveness of U.S. firms. H.R. 3838, the Tax Reform Act of 1985, would harm international competitiveness. The 20% increase in the cost of capital for U.S. manufacturers contained in the bill will force these firms to increase dramatically their prices if they are to continue manufacturing in the United States. Many of these firms cannot increase prices and remain competitive. For this reason, we urge the Ways and Means Committee to reconsider provisions within the tax reform legislation that would increase the cost of capital and, therefore, harm the ability of U.S. firms to compete.

LET'S SHARPEN AMERICA'S COMPETITIVE EDGE

INTERNATIONAL COMPETITIVENESS

The United States was the dominant force in the world economy for several decades after World War II. America took the lead in restructuring the world's economic system..

While U.S. Foreign activities had relatively little effect on our domestic economy, our trade, investment and monetary policies were essential to the economic and political interests of the free world.

But the issues and problems confronting the global economy have grown in number, size and complexity during the last decade.

U.S. exports and imports as a percentage of gross national product have risen markedly in recent years. And the world is becoming more economically interdependent. As a consequence, America must meet the challenges presented by an increasingly competitive global economy.

Free Trade is Vital. Last September, the U.S. Chamber wrote President Reagan to emphasize the critical importance of open world trade to America's economic future. The Chamber noted that the causes of our trade deficit are numerous and complex, and that the strength of the U.S. dollar in exchange markets is largely a result of the strength of the U.S. economy.

But the Chamber said billions of dollars in market opportunities for U.S. firms here and abroad are lost because of the high value of the dollar and some unfair and unreasonable trading practices of competitor nations.

While bemoaning the dozens of trade-restrictive bills in Congress, the Chamber urged the President to make full use of his powers to restore fairness in the international marketplace.

The U.S. Chamber supports efforts to improve American competitiveness based on the promotion of open and fair trade rather than protectionist solutions. Chamber recommendations outlined in the broader areas of taxes, spending, regulation and monetary policy are more effective solutions to America's trade problems than protectionist measures.

At the same time, some specific trade recommendations of the U.S. Chamber are to:

o Promote economic growth policies in world economies. Many nations' economies are plagued by stagnant economic growth. The only way to repay debts and enhance productivity is through high growth policies of lower taxation, limits on government spending and stable monetary policy.

o Enforce existing U.S. trade laws. This will improve the access U.S. firms have to foreign markets and safeguard them from unfair foreign penetration of U.S. markets.

o Repeal restrictions on the export of American goods to foreign buyers where no strategic considerations are involved. Such restrictions hamper the ability of U.S. business to compete abroad.

o Encourage an activist export role for the U.S. government. This includes educating the U.S. business community on how to export, aggressively utilizing export-credit facilities and the mixed-credit program, improving the Foreign Corrupt Practices Act, changing antitrust laws that hurt American international competitiveness and upgrading the diplomatic support given to U.S. business interests.

o Strengthen the global trading system. We need to initiate a new General Agreement on Tariffs and Trade (GATT) round that includes services and agriculture as vital components of an activist trade policy.

o Develop a workable trade adjustment program. We need a program that deals with the human side of the problem - individuals and their companies.

o Strengthen the role of LDCs. We need to encourage less developed countries (LDCs) to remove investment and trade barriers. We also need to support joint efforts by the World Bank and International Monetary Fund to address the related problems of LDCs' debts, lack of growth and restricted impoorts. And, we must seek a constructive solution to the world debt problem.

o Oppose cargo preference rules. Imposition of excessive shipping costs by mandated preferences for U.S. vessels erodes America's competitive position in international trade.

Finally in zeroing in on the new reality of global competitiveness, we must:

o Increase our supply of productive capital. The supply of capital to U.S. firms must be increased, its costs reduced to levels our competitors enjoy and the ability of capital to flow to its most productive uses must not be impeded by our myriad taxes and regulations.

o Create, apply and protect new technology. Our preeminence in technology has been our strongest competitive advantage. We need more research and development to give us a broadening base of scientific advancement adaptable to commercial uses, and we need to protect intellectual property by strengthening our patent, copyright, trademark and trade-secret laws and treaties.

o Develop a higher skilled, more flexible work force. Human resources -- our most vital resources -- make the real difference. Investment in education and training to increase the skills, flexibility and motivation of our work force is essential if we are to sharpen our competitive edge.

Our merchandise trade deficits are more than $100 billion a year. U.S. exports today account for the smallest share of the nation's output since 1977. The U.S. Chamber will pursue vigorously the above objectives to sharpen our competitive edge and restore our trade leadership.

Mr. GUARINI. As you know, Mr. Sam Gibbons would have liked to have been here. Unfortunately, he had to go back home because of a death.

Mr. Wortell, you represent the Trade Reform Action Coalition called TRAC, and we certainly welcome you here and ask you to proceed with your testimony.

STATEMENT OF MARVIN R. WORTELL, CHAIRMAN OF TRITON INDUSTRIES, INC., AND MEMBER, NATIONAL TOOLING AND MACHINING ASSOCIATION, REPRESENTING THE TRADE REFORM ACTION COALITION, ACCOMPANIED BY ILONA M. HOGAN, COUNSEL

Mr. WORTELL. Thank you.

I am a member of of the National Tooling and Machining Association which represents 14,000 small companies in the metalworking industry.

I am also president of Triton Industries, Inc. We have two plants in Chicago, one located on the west side and the other on the south side. We are considered one of the leading contract manufacturers of precision sheet metal fabrications and metal stampings.

Most every company in our industry is a small business and we encompass the entire tooling, machining, screw machine products and other basic operations that are essential to every industry in our country and especially to our defense industrial base.

I founded Triton 25 years ago this coming June. Until recently we had employed a total of 225 people with approximately half being medium- to high-skilled employees.

We serve diverse industries across the United States from agriculture to computers. We are a very capital intensive industry and I use assets of over several million dollars to produce sophisticated metalwork we make.

Just as my colleagues in the agricultural industry, we also borrow money. Through the years, I have been a careful observer of economic shifts in this country.

We have survived the various recessions our country has been through. During our down turns, we improved our production capabilities to capitalize on the eventual upturn in the manufacturing economy that heretofore was always sure to come.

We generally went from overtime to normal or reduced hours in recessionary periods but with only modest layoffs. We are essentially a manufacturers' manufacturer, and I have been an ardent observer of the proud industrial giant that spawned much of America's huge middle class society.

This time things are different. We are preparing, hopefully not too late, for our participation in a rapidly shrinking American industry.

My peers, from all facets of the metalworking industry, are faced with the same problem. The Chicago area has long been the leading metal-working center of the United States and is undergoing a major shakeout because of the shrinking industrial base in America.

My son Brent and I are hoping to be survivors. We have seen our work force shrink from 225 to 110 employees. Our sales declined

from $12 million to $7.5 million and our company is currently in the red. We are planning to relocate and consolidate all of our office staff to our southside plant. This will probably be only a prelude to the further reductions in our total manufacturing operation.

Through the years we have seen most of our customer base move to the Sun Belt. We were lucky enough to maintain most of their business and consequently keep our heads above water.

Many of those same companies have now ceased operations or moved plants offshore. The products affected include tape recorders, office equipment, telecommunications and now computers and many others.

This shrinking of the U.S. industrial base caused by our foreign trade imbalance has been taking place over a number of years. The shrinkage became more rapid over the last 5 years with the greatest decline occurring over the last year.

If you saw the pain and bewilderment on some of our long-time employees as they have been told that their job has disappeared somewhere offshore, and their realization that they now can look forward to probably selling hamburgers at a much lower wage—wouldn't you want to enact legislation to help preserve their jobs?

Thank you for allowing me to express my viewpoints in this matter.

I am accompanied by Ilona Hogan, Washington counsel to the Metalworking Industries, and with your permission, I would ask her to summarize the legal aspects of our formal testimony in our remaining time.

Thank you.

Mr. GUARINI. Thank you very much.

[The prepared statement follows:]

TRADE REFORM ACTION COALITION

STATEMENT ON BEHALF OF THE
TRADE REFORM ACTION COALITION (TRAC)

on

TRADE REFORM LEGISLATION

to the

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

March 21, 1986

Presented by:
Marvin R. Wortell
Triton Industries
Chicago, Illinois

Accompanied by:
Ilona Hogan, Esq.
Hogan and Hogan
Washington, D.C.

TRADE REFORM ACTION COALITION

SUMMARY

DUMPING AND SUBSIDY LAW CHANGES ARE ESSENTIAL TO ANY NEW OMNIBUS TRADE LEGISLATION

We now have a growing bipartisan consensus in both houses of Congress that omnibus trade legislation should be enacted in 1986, and that any such legislation should include a strengthening of U.S. trade laws. For the Trade Reform Action Coalition (TRAC),* this growing consensus lends support to what we have been saying for more than a year: that the Trade and Tariff Act of 1984 was only an important first step in the direction of more effective U.S. trade laws.

In that regard, TRAC fully supports the continuing strong Congressional interest in reform of Sections 201 and 301 of the Trade Act of 1974. This is vital to ongoing efforts to enact truly comprehensive trade law reform legislation. However, TRAC members also believe it is equally essential to include key dumping and subsidy law changes in any new omnibus trade bill.

Constructive dumping and subsidy law changes must in fact be central to any serious Congressional effort to strengthen U.S. unfair trade laws for the following two reasons. First, there is considerably less discretion (and political influence) in the dumping and subsidy laws than there is in Section 301, where so much Congressional attention is currently focused. Second, the problem of dumped and subsidized imports is only growing worse, as new forms of dumping and subsidization proliferate in the U.S. market.

The fact is that, despite the technical nature of the dumping and subsidy laws, they are potentially the most important of all U.S. trade laws. That is why members of TRAC strongly urge that Congress continue its reform efforts in the dumping and subsidy law areas. Within that context, there are at least six major dumping and subsidy law issues that we believe are critical -- issues that should be addressed in any omnibus trade bill passed by the Congress later this year. These are the following:

1. Improved protection against unfair trade by diversion (e.g., such indirect unfair trade practices as "diversionary dumping" and "upstream subsidization");

2. Clear statutory guidelines in regard to cumulation (the adding together of dumped and/or subsidized imports in the determination of injury);

3. A viable private or class action damages remedy for dumping (which would provide full compensation for the injury caused by dumping);

4. A stronger U.S. commitments policy regarding foreign government promises to phase out and eliminate subsidies;

5. A more effective means of addressing critical circumstances (import surges) in the early stages of trade law cases; and

6. More efficient procedures for disclosure of information crucial to parties in trade law proceedings.

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*The Trade Reform Action Coalition includes member organizations that employ well over 5 million people, and producing companies that account for over $300 billion in annual sales. Industries represented include automotive parts, chemicals, footwear, furniture, leather goods, metalworking, natural and man-made fibers/textiles/apparel, non-ferrous metals, and steel and steel distribution.

STATEMENT ON BEHALF OF THE
TRADE REFORM ACTION COALITION (TRAC)
ON
TRADE REFORM LEGISLATION

March 21, 1986

On behalf of the Trade Reform Action Coalition (TRAC), I am pleased to be here today to discuss trade law reform, particularly the need to modernize our trade remedy laws and make them more responsive to U.S. industries.

TRAC represents a substantial cross-section of American companies, trade associations, and labor unions, formed almost three years ago to support the strengthening and modernization of key U.S. trade laws. TRAC's member organizations (a listing is attached to my testimony) employ well over 5 million people, and the producing companies account for over $300 billion in annual sales. Industries represented include automotive parts, chemicals, footwear, furniture, leather goods, metalworking, natural and man-made fibers/textiles/apparel, non-ferrous metals, and steel and steel distribution.

TRAC represents a large slice of American manufacturing, and its member organizations all share two basic concerns: (1) what is happening to our industries because of unfair or disruptive foreign trade practices, and (2) the inability of current trade remedy laws to deal adequately with such practices.

TRAC believes that we are witnessing the systematic decimation of America's industrial base. One industry after another -- including our most competitive hi-tech industries -- is losing market share, often as a result of foreign unfair or disruptive trade practices.

The U.S. economy is now at a crossroads and in need of direction. We can continue to pretend that our present trade policy is sufficient, while our trading competitors are destroying our most vital industries; or we can take another path, and that involves re-examining present U.S. trade policy at its roots, and then taking strong action to defend ourselves in what is already a full-scale international trade war -- a war that TRAC members believe we are losing. We applaud the Subcommittee for undertaking this re-examination.

Inadequate trade laws and trade law enforcement are certainly part of the problem. However, part of the blame must also go to an incoherent trade policy and the failure to make trade policy a top national priority.

We now have a growing bipartisan consensus in both houses of Congress that omnibus trade legislation should be enacted in 1986, and that any such legislation should include a strengthening of U.S. trade laws. For the Trade Reform Action Coalition (TRAC), this growing consensus lends support to what we have been saying for more than a

year: that the Trade and Tariff Act of 1984 was only an important first step in the direction of more effective U.S. trade laws.

TRAC members therefore welcome ongoing Congressional efforts (1) to make the U.S. "escape clause" (Section 201) a more viable fair trade statute; (2) to make Section 301 a more workable mechanism for responding to foreign unfair trade practices; and (3) to strengthen in key ways our laws against foreign dumping and subsidies. Accordingly, TRAC is supporting comprehensive trade reform legislation (H.R. 2809 and H.R. 3777) now pending before the Subcommittee that would accomplish these goals.

As we saw in the footwear case, our fair trade statute, Section 201, has numerous serious flaws. Decision-making is too politicized. Moreover, the requirement that imports must be the "substantial" cause of injury is over and above what the GATT requires; the "threat of injury" concept is only vaguely defined; petitioners are denied the possibility of early relief if an import surge occurs during the course of an investigation; the law does not allow major parts and component producers to participate in proceedings; and petitioners are prevented from reapplying for relief unless two full years have elapsed.

Our Section 301 unfair trade statute is also in need of serious reform. It too is an overly politicized statute; it

is lacking in strict time lines; there is often no verification of information submitted by foreign governments; the law has inadequate procedures for disclosure of confidential information; and there is no requirement for action when foreign "targeting" practices cause injury to U.S. companies and workers.

TRAC fully supports the continuing strong Congressional interest in reform of Sections 201 and 301 of the Trade Act of 1974, but we believe it is equally essential to include key dumping and subsidy law changes in any new omnibus trade bill.

Constructive dumping and subsidy law changes must in fact be central to any serious Congressional effort to strengthen U.S. unfair trade laws for the following two reasons. First, there is considerably less discretion (and political influence) in the dumping and subsidy laws than there is in Section 301, where so much Congressional attention is currently focused. Second, the problem of dumped and subsidized imports is only growing worse, as new forms of dumping and subsidization proliferate in the U.S. market.

The fact is that, despite the technical nature of the dumping and subsidy laws, they are for many industries potentially the most important of all U.S. trade remedy laws. That is why members of TRAC strongly urge that Congress continue its reform efforts in the dumping and subsidy law areas. Within that context, there are at least <u>six</u>

major dumping and subsidy law issues that we believe are critical -- issues that should be addressed in any omnibus trade bill passed by the Congress later this year.

THE ISSUES

I. DIVERSION

This problem occurs when dumped or subsidized products are used as raw materials or components in so-called "downstream" products. Two areas of primary concern relate to "diversionary dumping" and "upstream subsidies." Examples of "diversionary dumping" occur if Peruvian yarn, subject to a dumping finding, is incorporated into sweaters (from Peru or elsewhere) that are sold in the United States; or if dumped French steel, subject to a quota Arrangement, is incorporated into British cars that are then exported to the U.S. An example of "upstream subsidies" occurs when subsidized Brazilian steel is incorporated into a Brazilian tractor that is sold in the United States. Current practice, however, is not to extend the upstream subsidy law across national boundaries, e.g., when subsidized French or Italian steel is used in a German machine tool that is sold in the United States.

Solution: Legislation to:

- provide the right to redress the injury that occurs when imported products contain dumped components (At present, only subsidized components are partially covered by U.S. trade law.);

- permit the Commerce Department to monitor and, if warranted, investigate imports of products that contain components or raw materials that are subject to large dumping or subsidy duties or a quota Arrangement;
- address the unfair trade practice that occurs when foreign producers charge one price for raw materials used in finished products consumed domestically, and another (lower) price for raw materials used in finished products that are exported;
- enlarge the third-country application of current upstream subsidy law from subsidies paid by a customs union to subsidies paid or authorized by a customs union or its members;
- create a "special diversion rule" to allow action to be taken when finished product imports increase as a result of a prior subsidy finding or quota Arrangement on a raw material or component;
- eliminate drafting oversights that have resulted in artificial distinctions regarding subsidized capital and subsidized goods and services; and
- allow American component manufacturers to initiate, and participate in, trade cases involving dumped and subsidized parts that are contained in finished product imports.

II. CUMULATION

Although the 1984 Trade and Tariff Act allowed for "cumulation" -- where unfairly traded imports from several countries are combined to determine injury to a domestic industry -- the International Trade Commission has tended to interpret this provision in a manner more restrictive than Congressional intent.

Solution: Legislation that would ensure that the intent of Congress in regard to cumulation is not undermined by inconsistent or overly narrow interpretations of existing language. Such legislation would:

- combine dumped and subsidized imports in determining injury to an industry;
- make no geographical distinctions when combining unfairly traded imports;
- make no distinction between imports of signatories and non-signatories to the GATT Subsidies Code during this process;
- allow unfairly traded imports covered by remedies imposed within the last twelve months to be combined with currently investigated imports; and
- make cumulation mandatory in threat of material injury determinations.

III. PRIVATE DAMAGES

If a domestic producer is injured by the dumping of a product, it currently has no effective private damages remedy to compensate fully for the injury that has occurred. Current law only provides relief for injury from future imports, which is not a sufficient deterrent to predatory dumping.

Solution: Legislation to provide domestic producers with quick access to the federal district courts for actual damages that reflect the full extent of injury caused by dumping.

IV. SUBSIDIES CODE COMMITMENTS

In trade cases where the U.S. has accepted commitments by foreign governments to eliminate subsidies (and the U.S. has granted the benefit of an "injury test"), there have been instances where such commitments have either not been honored, or have been ineffective.

Solution: Legislation to require both stronger foreign government subsidy commitments and full compliance to ensure that "a country under the Agreement" (i.e., one that is eligible to receive the injury test):

- eliminate all export subsidies within one year;
- not increase or add new export subsidies; and
- eliminate immediately all export subsidies on products in which that country is already competitive.

V. CRITICAL CIRCUMSTANCES - "IMPORT SURGES"

When a subsidy or dumping petition is filed, foreign producers often increase shipments immediately after the filing in order to have their products arrive before penalty duties are assessed. This circumvents the remedial intent of the law. Present law does provide for the retroactive assessment of duties (90 days before the publication of a preliminary determination) if the Commerce Department determines that evidence of an import surge exists. However, the current administration of the critical circumstances provision results in relatively few affirmative determinations for a variety of reasons.

Solution: Legislation that would enhance the effectiveness of provisions dealing with import surges in the early stages of trade law cases. Such legislation would:

- limit the role of the International Trade Commission with respect to surge rulings;
- provide more flexible guidelines in determining "knowledge of dumping"; and
- clarify that "massive imports" means relative to previous import levels from the country under investigation.

VI. RELEASE OF INFORMATION

Current procedures for disclosing information to counsel for those who participate in trade law proceedings remain cumbersome, time-consuming, expensive and, in some cases, unfair.

Solution: Legislation that would fix time limits on the Commerce Department to ensure that proper requests for disclosure are decided promptly; as well as other streamlining procedures that would provide fairer standards and reduce the costs involved in the release of vital information.

* * * *

There are a number of other important trade law areas that TRAC would like to see addressed, and I would be happy to discuss them if we had more time. Taken as a whole, the changes recommended in our testimony and embodied in the bills H.R. 2809 and H.R. 3777 do two important things: (1) they broaden the accessibility of our trade laws to industries that are now denied relief because the laws are either too narrowly defined, or are interpreted and administered in such a way as to limit their applicability; and (2) they provide more predictability and fairness as to how these laws will be administered.

On behalf of all members organizations of TRAC, I thank you for the opportunity you have given me to testify.

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TRADE REFORM ACTION COALITION (TRAC)

Alliance of Metalworking Industries
Amalgamated Clothing and Textile Workers Union
American Apparel Manufacturers Association
American Brush Manufacturers Association
American Chain Association
American Cutlery Manufacturers Association
American Die Casting Institute
American Federation of Fisherman
American Fiber, Textile, Apparel Coalition
American Furniture Manufacturers Association
American Gear Manufacturers Association
American Institute of Steel Construction, Inc.
American Iron and Steel Institute
American Metal Stamping Association (Washer Division)
American Mushroom Institute
American Pipe Fittings Association
American Textile Machinery Association
American Textile Manufacturers Institute
American Wire Producers Association
American Yarn Spinners Association
Anti-Friction Bearing Manufacturers Association
Automotive Service Industry Association
Association of Die Shops International
Association of Synthetic Yarn Manufacturers
Bicycle Manufacturers Association of America, Inc.
Brass and Bronze Ingot Institute
Carpet and Rug Institute
Cast Iron Soil Pipe Institute
Cast Metals Federation
Clothing Manufacturers Association of America
Committee on Pipe and Tube Imports
Copper and Brass Fabricators Council, Inc.
Cutting Tool Manufacturers Association
Expanded Metal Manufacturers Association
Footwear Industries of America, Inc.
Forging Industry Association
Group of 33
Hand Tools Institute
Industrial Fasteners Institute
Industrial Perforators Association, Inc.
Industrial Union Department, AFL-CIO
International Ladies' Garment Workers' Union
International Leather Goods, Plastics and Novelty Workers Union
Investment Casting Institute
Iron Castings Society
Knitted Textile Association
Lead-Zinc Producers Committee
Luggage and Leather Goods Manufacturers of America, Inc.
Man-Made Fiber Producers Association, Inc.
Metal Cutting Tool Institute
Metal Treating Institute
Metalworking Fair Trade Coalition

(over)

National Association of Chain Manufacturers
National Association of Hosiery Manufacturers
National Association of Pattern Manufacturers
National Association of Uniform Manufacturers
National Cotton Council of America
National Foundry Association
National Knitwear Manufacturers Association
National Knitwear and Sportswear Association
National Screw Machine Products Association
National Tooling and Machining Association
National Wool Growers Association
Neckwear Association of America
Non-Ferrous Founders' Society
Northern Textile Association
Outdoor Power Equipment Institute
Plumbing Manufacturers Institute
Scale Manufacturers Association, Inc.
Steel Founders' Society
Steel Plate Fabricators Association, Inc.
Steel Service Center Institute
Synthetic Organic Chemical Manufacturers Association
Textile Distributors Association, Inc.
Tool and Die Institute
United Food and Commercial Workers International Union
U.S. Fastener Manufacturing Group
Valve Manufacturers Association
Welded Steel Tube Institute
Work Glove Manufacturers Association

Mr. GUARINI. I understand that the TRAC bill that was put in is very similar in great part to H.R. 1950, which is the bill Mr. Duncan put in with a number of cosponsors from both parties of the House.

You also add provisions concerning countervailing duties and antidumping, I understand.

Do you have any comments on how TRAC would feel concerning a bill to make dumping compensatory, to give sanctions, punitive damages to foreign countries that dump?

As it is right now, they dump, they consult a lawyer after they are cited, and then they can dump another 6 months or so until they are told to stop dumping. It is with impunity, there is no sanction. The companies, in the meantime, have large economic losses.

Does TRAC or have you given any thought to what your position would be on the dumping procedures to make it compensatory for damages?

Mr. WORTELL. I will defer that to Ilona.

Ms. HOGAN. Mr. Chairman, thank you very much.

Mr. Wortell stated that he would like me to just quickly summarize some of TRAC's provisions. And the one you are referring to is, of course, one of those that we endorse.

We wanted first to thank you very much for all the work that you have done on H.R. 1950, because that is, as you know, TRAC provisions regarding section 201 and 301 are virtually identical to those that you have endorsed in those two important areas.

Our testimony this morning, however, seeks to emphasize the fact that we should not forget dumping and subsidy law changes as the committee is trying to structure an omnibus trade reform bill. And specifically, we wanted to emphasize six main areas relating to dumping and subsidy law changes.

I would remind the members of the committee that TRAC urged comprehensive trade law reform at least 3 years ago and some portion of that was done in 1984 with passage of the Omnibus Trade and Tariff Act, and now it is right that we proceed on to reform of 201 and 301.

However, these six dumping and subsidy areas, we think, are still essential. This subcommittee and this committee approved them 2 years ago, but unfortunately we lost them in conference.

However, the specific issue that I think you were referring to is a viable private damages remedy, and, of course, that is something that is among our six priority issues.

There have been some bills and there have been numerous hearings in the other body with respect to a private damages remedy, but it has always been couched in terms of amendments to the antitrust laws, and consequently, did not appear to fall within the jurisdiction of this committee.

However, there is a private damage remedy statute on the books, the Revenue Act of 1916. Unfortunately, to my knowledge, it has never been successfully used because it is also a criminal statute which requires a very heavy burden of proof in terms of specific intent.

We would strongly urge the committee, and we are still working on this ourselves, to try to come up with a private damages dumping remedy geared to that 1916 Revenue Act, and yet stripping

from it that heavy burden with respect to specific intent, because it really should not be a criminal statute, but rather a means of obtaining civil relief retroactively as opposed to only prospectively.

Mr. GUARINI. Thank you.

That would be only with regard to dumping that you are talking about, or would that be any other violation of the trade laws?

Ms. HOGAN. At the moment, we are focusing on the Dumping Act.

Mr. GUARINI. All right. Thank you.

Mr. Morsani, the Chamber of Commerce has seemed to have taken a position contrary to three of the major bills that have been put in, that is, to give a President less authority in 301 and to transfer the final decision authority to the USTR.

It has long been thought that trade should be depoliticized and that it has taken too high a political profile. The idea of having USTR handle it would be to also give him more standing throughout the world when he negotiates and when he travels talking with our trading partners.

Could you comment on why the Chamber of Commerce has taken a position contrary to what Mr. Michel has testified to, and to H.R. 1950, which is the bill that was put in by myself and Mr. Duncan and 108 cosponsors, and the staff committee report, which the Ways and Means Committee is working with? Could you give us a reason why you feel that it should not be depoliticized?

Mr. MORSANI. Well, I think our concern is that it would be too heavily politicized; that is exactly the major concern that we see by giving the USTR too much additional authority. We are concerned about that.

Trade over time has been used as a club over people's head and we have all kinds of examples of that, and we think that it would not be in our best interests if we broaden that, and, very frankly, that is what we think would probably happen.

Mr. GUARINI. Well, do you think that there is a division of thinking within the Chamber of Commerce concerning this point or has the Chamber officially taken a position on it?

Mr. MORSANI. We have officially taken a position, but to say there wouldn't be some divisions in it would be unfair. Certainly, when you take a broad spectrum of business that we represent, there is going to be some. We are not always going to agree, but on balance, the business community is supportive of that, yes, sir.

Mr. GUARINI. Then in essence, what you are doing is suggesting that we leave it within the purview of the State Department, in part, and that the foreign affairs decisions would be made with trade in mind rather than trade being principally a separate item by itself, where the USTR would be administrator.

Mr. MORSANI. Yes, sir, in the main. There could be some slight changes, but I think maybe very, very careful——

Mr. GUARINI. In regard to the intellectual property rights, you said we are losing $8 to $20 billion a year. I am very much in agreement that we should be—it is long overdue—doing something to protect our copyrights and trade laws; too little has been done in this area. Your suggestion I support.

Do you feel that is consistent with GATT as it is today?

Mr. MORSANI. Not the way GATT is structured today, because it doesn't cover those.

Of course, we are encouraging GATT, and did so in our meetings last week with the people there; and of course our whole position has been that one of the reasons to encourage a new round of GATT is to have those intellectual property rights included.

We are confident that that must be part of GATT discussions.

Mr. GUARINI. Do you feel remedies of 201 and 301 should be reformed at all, or should we wait to negotiate a new round of GATT. Unfortunately, the Tokyo and Kennedy rounds were 7 years apiece. A new GATT round would get into the tougher and tighter questions such as Government procurement, intellectual property rights, subsidies, agriculture, and countertrade, bartering; there are some areas that they are getting in which are more sophisticated than the earlier round of negotiation.

Do you feel that we should in the meantime strengthen our hands in 201 and 301 and any other trade remedies?

Mr. MORSANI. Absolutely. We feel that the President, as my letter to the President on September 5 stated, and since that time, there are an awful lot of things on the books that could be done by the administration in 201 and 301, and we think that we need to enforce those laws very strongly.

Mr. GUARINI. Could you comment on how you feel 201 or 301 should be changed? Anything specific you want to point out?

We just talk about USTR not having authority. Is there anything specific? There is an interim relief we discussed with Bob Michel in 201 that the industries would be helped, if they had it. Any other thoughts you want to throw out?

Mr. MORSANI. We would support, as an example, if you moved things, we would certainly be opposed to quotas.

There is maybe some room in the tariff areas, but I think if we get into the quota, you have something entirely different. So we would be more inclined to support something in the tariff areas, not in the quotas areas.

Mr. GUARINI. Well, of course, would you support a plan to be sent to the Congress every year by the President, as a responsibility of the President, as to what our blueprint is for trade, and the encouragements of labor and industry and Government working together more closely than they have in the past?

Mr. MORSANI. Well, we think that Government, labor, and management should work together. I think, as Mr. Michel said——

Mr. GUARINI. Too little has been done.

Mr. MORSANI. Tremendous changes have been made in the last 30 years. I think we need to continue that track. I think we are having difficulty and over the years, it has certainly improved that whole area. We need to do that.

Mr. GUARINI. Would you have any thought you want to leave us with as to how you feel this might be affected, if there is any comment that you want to make at this time.

Mr. MORSANI. On section 301?

Mr. GUARINI. How we can improve our working together as a cooperative team instead of working separately.

As you know, Japan almost officially works with their——

Mr. MORSANI. I am very familiar.

Mr. GUARINI. We have antitrust laws.

Mr. MORSANI. I think we have a whole different system here. I don't think we have the same culture. I think we have to work closer together within the system we have been privileged to have.

I think we have had back in the early 1960's, when our whole infrastructure was ready to destruct between Government and labor and business and the whole social system. We have corrected that.

I don't think that MITI—Ministry of International Trade and Industry—I have been in the export-import business for some 20 years—I don't think that MITI is right for the United States, not that we shouldn't have a strong focus on trade.

It has been my personal conviction in what I have championed is that we need to have trade at a higher level of visibility and have it more broad in our Nation.

We have to do that, even academia people have to be taught in our colleges, K through 12, that our world is bigger than Stillwater, OK, or someplace, and that is the direction that we need to take. I think we are on that road.

We only seem to operate generally under crises in our country. It takes us a while to get our attention.

Mr. GUARINI. We are a crisis-oriented Nation.

Mr. MORSANI. Unfortunately.

Mr. GUARINI. That is the way democracy would normally be.

Some of the bills they suggest, that there would be advisory councils set up for certain sectors, councils that would advise on the problems and help to manage the problems that would have labor and industry working on the advisory board with the USTR. Would that be in accordance with your thinking of the chamber of commerce, or is there anything contrary in your philosophy?

Mr. MORSANI. Well, I think advisory boards have always served our Nation well and where those can be used, I think that we all can benefit.

We were encouraged to see the example of the Packard Commission in the Department of Defense, and the other advisory boards that I have personally served on in our industry.

Mr. GUARINI. Mr. Wortell, how do you believe we should phase out foreign government subsidies? Does TRAC have a program for this? How we could get out of the problem of being less competitive, because foreign governments are subsidizing?

Mr. WORTELL. I think that is a legal question, also. I am going to defer that. If I make one comment, you asked a question about how we could address having labor in our organization.

Our company is nonorganized, nonunion. We need to talk to the people that are working out there to point out to them that we no longer, as 30 years ago, we no longer are in the adversarial position, that no one really is doing a very good job of communicating with them.

We don't need any regulation or laws. Maybe that should be one of the issues the President should address.

American workers are becoming much attuned. I think our work force in America is equivalent or better maybe than any workforce around the world, but we need to talk to them more and someone

should explain to them what is happening in the international scene; that might be a help.

I am going to defer your other question.

Mr. GUARINI. I will ask you that before I turn to Mr. Crane.

Ms. HOGAN. Just a quick response.

When I mentioned our six priorities in the dumping and subsidy area, obviously some of them are in fact in the subsidy area and I think you know that we have tried to fashion a better remedy both in the diversionary dumping area and in the upstream subsidization area as well.

We have offered some suggestions on a stronger U.S. commitment policy, where in fact we enter into bilateral agreements with other countries for them to phase out and eliminate their subsidies in exchange for whatever negotiated items, and yet we have no real follow-up to make sure that those commitments are in fact honored. TRAC has looked at that area of the law and we have made recommendations in our more complete statement with respect to that.

But again, as with upstream subsidies, the committee and the Congress addressed that issue in 1984, and yet we have found that the way the new statutory provision has been administered, it has not had the effect that we thought this committee intended or that we thought the statute would have, and so we have once again tried to put language that would make the intent somewhat more clear.

The antidumping and countervailing duty laws are really the workhorses of the trade relief laws. They are much less discretionary than 201 and 301 and are just hopeful that the committee not overlook those areas of comprehensive trade law reform.

I think the past 3 years will bear this out where industries have brought dumping and subsidy cases, perhaps they haven't gotten all the relief they had hoped through those kinds of cases. However, they have gotten the attention of either the administration or others, and consequently, 301 situations have arisen.

So I think dumping and subsidy are certainly a precedent to 201 and 301 cases.

Mr. GUARINI. You are speaking using 301?

Ms. HOGAN. No question it has been much better. Even in the ways that H.R. 1950 would seek to reform it, sections 201 and 301 will still remain a discretionary statute, whereas AD/CVD, if it is constructed a little bit more narrowly, there is some more certainty for those industries bringing cases.

Mr. GUARINI. Thank you.

Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman.

I want to thank our distinguished witnesses on this subject.

Mr. Wortell, your solution to this diversionary dumping problem is to provide the right to redress the injury that occurs when imported product contained dumped components in contrast to current law where only subsidized components constitute an ingredient of a dumping case.

One of the potential complications it seems to me is traditionally in business, if you have got an excessive inventory on your hands, businessmen will frequently unload it at discount prices.

Now, if that ended up being a component of any product, would that be an incident of diversionary dumping?

Ms. HOGAN. I assume, Mr. Crane, you are speaking about intra-country situations as opposed to interstate, for example.

Mr. CRANE. Well, except I am thinking of intra as far as the dumping of the inventory, getting rid of the excess inventory.

If that ended up a component of a product that goes into a foreign market, would that be an incident then of diversionary dumping?

Ms. HOGAN. Let me respond to that with respect to the diversionary dumping amendment which we are proposing here. You are absolutely correct that the law now speaks to inputs in terms of upstream subsidy situations only. That is one side of the equation—the subsidies code.

We think there is a flip side, and that is the dumping code, and at this point, there is no form of relief in the event of diversion under the dumping code.

What we have tried to do with the amendment that we are supporting at this time is to limit it to very narrowly circumscribed situations. In this case, it is very significantly different from the amendment which passed this committee 2 years ago, which at that time was referred to as the downstream dumping amendment.

The way we have tried to narrow it was to meet some of the objections which were raised last time as to both the fairness and the administrability of such a statute. We have narrowed it to apply only to those cases where the input product has previously been the subject of an antidumping case, so that everyone is on notice that a dumping margin has been found with respect to that input product.

There is also language which would allow for situations, for example, where a dumping case may have been brought but would have been settled by virtue of an arrangement having been entered into. There again, if an arrangement was entered into, the investigation which would have taken place during the course of that arrangement or negotiation, would then be brought into the downstream case.

Mr. CRANE. Let me make sure I understand. If, in a diversionary dumping case, say it was semiconductors, because frequently they have got the excessive inventory and they unload those at below cost within a domestic market, sometimes in foreign markets, too, but if it were constrained to a domestic sale, and those people had not actually gone into foreign markets, say, in the recent case of Japanese semiconductors, where they had the excessive inventory and they were dumping against one another at home. They did get caught dumping in foreign markets, too.

It is only those that are found guilty of dumping in foreign markets with the end product coming to our shores, that could be accused of diversionary dumping?

Ms. HOGAN. Yes, certainly that is the situation that you describe. The semiconductor industry is a good example, because those cases have now been brought. We are trying to fashion a remedy here that takes into account the downstream effects when there has been a U.S. dumping margin found on the input product.

Mr. CRANE. Let me ask you another hypothetical. One of the problems our bankers have is we protect our sugar growers, and as a result, the domestic price of sugar here in the United States is significantly higher than the world price.

The Canadians, for example, can buy sugar at world prices, which is a market price significantly below our protected sugar price here in the States, put it into a finished product, export that cane across the border, and competition with American producers would be that of diversionary dumping.

Ms. HOGAN. If I could, Mr. Crane, I would like to perhaps respond to that in writing on the record, only because the industries represented by TRAC are not from the agriculture sector, and I understand they will be testifying next on the agenda here.

And, if I could, I would like to review that situation a little bit more closely, only because historically that has been a somewhat different sector from those for which we are speaking.

[The information follows:]

The diversionary dumping provisions of H.R. 2809 and H.R. 3777 would only apply in the described hypothetical situation if the sugar input in the Canadian baked goods had previously been the subject of an affirmative U.S. dumping finding; or had previously been the subject of a negotiated voluntary restraint agreement or other bilateral agreement. In either case, the dumping margins calculated in those prior investigations of the sugar input product would be factored in to the calculations on the downstream baked goods dumping case. The new language we support simply adds one more adjustment calculation to those which are already made in dumping cases and would, in fact, not require any new investigation from that already done in the prior input product investigation.

Mr. CRANE. The complication I can see is someone somehow smuggled at world prices into the United States market and sold it below our protected prices here, they would be guilty of dumping this sugar in this country. It just seems to me that if that in fact is the world price and we have erected barriers in our country to letting the market find itself, that under the diversionary dumping language, theoretically those people who are buying in the free market outside of our borders because they used that sugar could come under the definition of diversionary dumping with their finished products.

Ms. HOGAN. You have put a lot of variables into that one, and I would very much like to——

Mr. CRANE. Let me give you one more hypothetical. The cement manufacturers, for example, down in Texas were complaining that theirs is an energy intensive industry and they were bucking up against the competition of imports from Mexico, and Pemex, which is a monopoly Government-controlled oil and gas industry, was providing the energy to cement manufacturers in Mexico at, I think, about a tenth of what they were charging for that energy coming across the border into the U.S. market.

On the other hand, Pemex was making a profit. It was making a profit on their domestic sales even though, within the borders of Mexico, they are selling gas and oil at a significantly lower price than the world market price.

Would that constitute, even though Pemex was making a profit, but nevertheless selling its oil to its own people for less than for selling in the world market, would that be a case of diversionary dumping if the cement manufacturers down there used domestic

energy and then exported their cement product into the United States?

Ms. HOGAN. Mr. Crane, again, you are focusing in on an issue which I understand the committee certainly has before it. Again, the Trade Reform Action Coalition groups have not taken any kind of position upon the natural resource subsidy question and believe that it does fall within the countervailing duty aspects of the law.

I don't think that we as representatives of that group, not having taken a position, can specifically speak to it, other than to reiterate that you have addressed a subsidy issue under the subsidies code which would not be at all affected by the diversion proposal in the Antidumping Code.

Mr. CRANE. Let me just ask one question of Mr. Morsani, because it is one that has come up in all of the recommendations both sides represented, that is the changed status of U.S. Trade Representative.

Frankly, I am up in the air on that one. I find it hard to believe that the President himself could so deeply immerse himself in all these trade-related matters. Time won't permit it, which is why we created the USTR.

The arguments that have been advanced for giving him elevated status is that it would strengthen his negotiating hand, and it just seems to me in any negotiations or agreements or cases filed by the USTR, if he is not on the President's wavelength, he is not going to be USTR. He might make a mistake, but OMB directors, at least get taken to the woodshed. Do you think that is a real, bona fide concern?

Mr. MORSANI. Well, yes, sir, you take what happened at Caterpillar, look at the pipeline, look at the grain embargoes we have had over the years, our agricultural policy—we are not discussing in agriculture today—how we have misused our agriculture policies—I think that we have to preserve that.

I personally am very concerned, I guess I have seen it and the chamber is very concerned, we have seen so many abuses in the last 50 years by using trade as a club, that if we would have the wrong person in the USTR—maybe there would be some merit at some point in time to try it—as long as it could be a process that could be undone if you weren't happy and the President wasn't happy.

Maybe there are some negotiations along that line that might have some validity, but I think we would have to look at that to see whether or not we could support that type of thing. But on balance, I am very concerned that we would give that much authority.

Mr. CRANE. Well, I think—I will stand corrected if you gentlemen want to contradict me on this—I think all the recommendations, at least that I have seen, in effect give the President ultimate veto authority.

They do significantly strengthen the autonomy of the U.S. Trade Representative. There is still in effect a veto authority reserved for the President, depending upon a variety of other considerations, that may be paramount, that go beyond the scope of the USTR responsibilities.

They may be not so much political as geopolitical, national security-oriented questions that can be factored in. I would certainly

want to guarantee that the USTR didn't become a trade czar without any check on him.

On the other hand, with those kinds of guarantees, having an aggressive USTR is really in our national economic interest. Let me say that, in spite of all the criticism, this administration has done more in the last 6 months than previous administrations going back quite a number of years.

Mr. MORSANI. I certainly agree that an aggressive USTR is important, and I think that Ambassador Yeutter is an outstanding individual and we are very fortunate to have him, and no question about that.

I think since September we have put some teeth in our trade policy that we needed there; and we only regret that it wasn't done before, and I do think that more progress has been made recently than has been made in several administrations, absolutely.

Mr. CRANE. Thank you very much.

Mr. GUARINI. I may say, Mr. Morsani, the USTR as a member of the President's Cabinet, is certainly responsible to the President no matter what jurisdiction you do give him.

We have given a lot of jurisdiction to Cabinet members to make final decisions, subject, of course, to the President who will always have the final word as our Commander in Chief and as the head of our country, so that I don't think there is any problem, the fact that he is responsible indeed as Cabinet minister to the President of the United States, who does have the final and should have the final say in any decision he makes as far as veto is concerned.

It is with that reservation that I think that there is some validity that we can find some kind of ground here where we can safeguard the concerns of the Chamber of Commerce, at the same time still do what Mr. Crane says to give the USTR more teeth and more authority so he can be expected as the negotiator for trade in our foreign trading partners.

I would like to ask Mr. Pease if he would proceed.

Mr. PEASE. Thank you very much, Mr. Chairman.

I would like to welcome our two panelists. In particular, I would like to welcome Mr. Wortell.

Chairman Rostenkowski, who unfortunately can't be with us today, asked me to thank his friend and constituent for joining us today, and to express his appreciation for the insights that you can give us, sir, on the condition of the manufacturing community in the Chicago area.

Mr. Wortell, I have been out for part of the testimony and have been trying to listen and catch up since.

Did you state a position on behalf of TRAC on whether we ought to shift 301 and 201 decisionmaking from the President to the USTR.

Mr. WORTELL. I am going to defer that one. However, if Chairman Rostenkowski was here, he probably would be unhappy with me for thinking of moving our plant out of the Eighth Congressional District.

Mr. PEASE. All of us are unhappy when constituents think of moving plants out.

Mr. WORTELL. This is why I am here, to see if we can change that.

Ms. HOGAN. In response to your question, Mr. Pease, we did state earlier and our written testimony certainly states that we support the provisions in H.R. 2809, which are very similar to the provisions in H.R. 1950 with respect to the 201 and 301 sections.

We recognize that while they tighten somewhat the discretion that currently undermines those statutes, that the discussion between the chairman and Mr. Crane relative to the USTR still obviously being under the hiring and firing of the President, does not entirely negate that particular problem.

But, yes, we do believe that by strengthening somewhat, narrowing the discretion somewhat, you are at least elevating the trade issue to a status that we believe it deserves, notwithstanding the fact that there will still always be that interagency advisory process where other areas may outweigh the trade issue, but certainly it would elevate the trade issue to the order of importance that we believe it does deserve.

Mr. PEASE. Well, Mr. Chairman, just to continue on this discussion for a moment because of your discussion with Mr. Morsani, I have been to the Far East twice in the last three 3 years and I was struck with our trading partners each time, we shouldn't take action against them in one regard or another, and they didn't use trade arguments, they used foreign policy arguments or national security arguments.

The South Koreans say, "We have got a threat from the north and from North Korea, and we are an ally of yours and you have troops here and we have to stand together." And last time I was there, last summer, the Thais were saying, "You shouldn't take action against us, because we have stood by the United States in three different wars," and dating back to World War II and Korean war and so on.

It just strikes me that an advantage of making this transfer from the President to the USTR, perhaps reserving veto power for the President, is that the USTR can say, "I am not in the foreign policy business, I am in the trade business," and would be better able to look our trading partners in the eye and say, "Based on your behavior in trade, we need to take this action against you."

If you permit the President to have ultimate veto power, he could, in unusual circumstances where foreign policy might be an important consideration, enter that decision and override the USTR.

But when that was not the case, the President, by failing to act, by not getting around to it, could let stand the USTR decision and it seems to me that would be helpful in the trade context.

Well, let me say just one other thing, Mr. Chairman, and that is that I was interested in the testimony of Mr. Morsani on trade adjustment assistance since that has been a particular interest of mine for several years.

You know that trade adjustment assistance was reauthorized, or is reauthorized in the reconciliation bill which has firmly cleared the Congress and hopefully President Reagan will sign that.

In the version that is the reconciliation bill, we do tie the receipt of cash benefits by laid off workers to their participation in job search activities, and we certainly tie it more closely to their participation over the long run in retraining activities. I think that is

a good suggestion that the chamber makes, and I commend you for it.

I have been very interested that several groups including yours and the Business Roundtable that appeared before us yesterday, and a number of the academic experts who were with us last weekend at our trade retreat down in Florida all were supportive of the idea that adjustment assistance is an important component of a trade policy on our part. There have been questions raised, as you have raised them, about the efficacy of a particular program that has been in effect.

I want to say to you that I am one member who is not interested in being associated with ineffective programs, so I want to work with you in every way that I can to strengthen the administratability of the trade adjustment assistance program, to tie it more closely to job search, so we get people back on the job. That is what they want; that is what we want, and to tie it more closely to retraining as well.

I have the strong feeling that a lot of the shortcomings of trade adjustment assistance which have been publicized in recent years have resulted from maladministration by the Department of Labor and by the Department of Commerce.

I have never, through several administrations, been an admirer of the Department of Labor in terms of its ability to administer programs efficiently, and I think over the last 4 years that general inability to administer programs was compounded by the legal problems which the Secretary of Labor had. He had other fish to fry besides looking after the TAA program, and by the existence in the Department of Labor and other departments of ideologues who were more concerned about ideological purity than they were about the practical administration of programs.

The administration, as you know, has taken an official position until recent weeks in opposition to TAA. I think some ideologues in the Department of Labor were determined not to make the program work so that their own position could be justified.

I believe the same thing is true to a degree in the Commerce Department for the portion of program that relates to firms.

I am very much encouraged by the appointment of Secretary Brock in the Department of Labor. I think that Secretary Brock is one of the most able civil servants that we have in our Government, and I believe that he has a naive belief that the job of an administrator is to administer efficiently, so I think there is considerable hope that the trade adjustment assistance program will be administered, even without any changes in the law, better and more efficiently and profitably.

But on top of that, I am going to try my best to change the provisions of the law at every opportunity I get to make it easier for the Department of Labor and the Department of Commerce to do the job that we all think ought to be done.

That doesn't require an answer on your part. I just wanted to make that assurance to you.

Mr. WORTELL. Could I make a comment on that?

Mr. PEASE. Yes, sir.

Mr. WORTELL. I mentioned we have a plant in the Southside of Chicago—10 miles from the steel mill area. There are no jobs for those folks.

The trade adjustment assistance bill is not going to—there is nothing for them to train for. There are no jobs for them. The thing that I spoke about is to try to do something to stop the destruction of the jobs that has been going on, more so in the last year.

That is, I speak probably more from the practical living in this world than my two colleagues to the right and left. I think you are in a very rich, successful Florida business; we are in the manufacturing metalworking business. I see this happening. So I would like you to consider that in your thinking, too.

Mr. PEASE. Surely. Well, as I indicated, trade adjustment assistance needs to be a part of our trade policy package. It has certainly been the whole thing through our efforts to curb unfair trade practices, dumping and subsidies, and all the rest.

We need to try to preserve the jobs in the first place, but when they do go, I think adjustment assistance is helpful, even in a situation like yours, where the prospects for alternative employment are not terribly bright.

There are other jobs within 20 miles or so of where you are, and at least some people, not all, some of the people on your work force can probably be trained.

If your own firms haven't been certified for trade adjustment assistance, I certainly would urge you to do so for the benefit of your employees.

Thank you, Mr. Chairman.

Mr. GUARINI. Mr. Morsani, lastly, let me ask you, you referred in your testimony concerning the problems in pricing and nonmarketing countries. We know of the problems that we have had there, where in many fields they overproduce to get hard currency, and they underprice us. Section 406 has not been very widely used. In fact, I don't think it has been used at all, so that we do not have any effective tool against this nonmarketing threat that we have to our industries.

Could you just put on the record your thoughts as to how this might be changed?

Mr. MORSANI. Well, in our testimony, I think in our written testimony we did address an alternative there. We can submit, and we will, Mr. Westbay will submit a complete detailed record on that.

Mr. GUARINI. We would appreciate it.

Mr. MORSANI. We have it.

Mr. GUARINI. We will keep the record open and appreciate hearing from you on it, because I think that is one of the problems that we have got to address.

Mr. MORSANI. Absolutely. We concur, and we have done a great deal of research on it and we will submit it all to you.

[The information follows:]

U.S. CHAMBER OF COMMERCE

William T. Archey
Vice President, International

April 7, 1986

The Honorable Sam Gibbons
Chairman, Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

As you know, Mr. Frank L. Morsani testified on Trade Reform Legislation before your subcommittee on March 21. During the hearing, Mr. Guarini asked us to more fully explain our proposal with respect to U.S. antidumping duty and market disruption laws relative to nonmarket economy (NME) imports.

Accordingly, we have prepared the enclosed statement and ask that it be included in the hearing record. This is an extremely important issue for the Chamber and our membership; it will grow in importance as trade with the NMEs increases. The Chamber approach is designed to provide simplicity, lower costs, and remove the almost total unpredictability of the present system.

We will be glad to review this issue with you and your colleagues as you proceed to consider revisions to our trade laws.

Sincerely,

William T. Archey

Enclosure

1615 H Street, N.W. □ Washington, D.C. 20062 □ 202/463-5455

STATEMENT ON REVISING U.S. IMPORT LAW REGULATING NONMARKET ECONOMY (NME) IMPORTS

There is a need to reform U.S. antidumping duty and market disruption laws that regulate imports from nonmarket economy (NME) and Communist countries. As our trade with the NMEs grows, the method by which we deal with domestic injury caused by NME imports will become increasingly important.

There is general agreement in the U.S. business community that our current antidumping duty law regulating NME imports is grossly inadequate. The surrogate country/constructed value approach for determining dumping from NMEs has created tremendous confusion on the part of government regulators, importers and domestic industry alike. Moreover, it has become increasingly difficult to find surrogate countries that are willing to assist in dumping investigations.

Section 406 of the Trade Act of 1974, on market disruption caused by Communist countries, has also not been a useful tool in the present import administration process. Of the ten market disruption investigations initiated since the enactment of the Trade Act, none have resulted in import relief for the U.S. petitioner. The procedure has proven ineffective, in part, because of the President's broad discretionary authority to accept or reject the recommendations of the International Trade Commission (ITC) for relief.

Both laws should be replaced by a single new law, which is nonideological, i.e., applicable to NMEs rather than "Communist countries."*/ The new law should provide clearer guidelines as to what constitutes a "nonmarket economy country" rather than require an annual list of NMEs. This is to ensure a proper flexibility in the administration of the law.

The law should also permit an industry or sector within an otherwise NME to be judged market-oriented for purposes of antidumping duty investigations if, for example, that industry or sector is able to function reasonably independently of state control in establishing production levels and product price determinations. Such a provision would serve as an encouragement to a foreign industry to provide U.S. investigators with meaningful and verifiable production data. On the other hand, the law should not apply to state-controlled industries in market economy countries.

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*/ A July 1985 ruling of the U.S. Court of International Trade that U.S. countervailing duty law is applicable to NME imports has added a new element of uncertainty to the process. The ruling, which is currently under appeal, overturns an earlier Commerce Department ruling that the law does not apply to NMEs, as well as decades of practice. Should the court ruling be upheld, U.S. countervailing duty law may be another area in need of legislative remedial action.

Previous efforts to revise U.S. import law relative to NME imports have involved attempts to legislate a mechanism for measuring price-based fair market sales. In contrast to such proposals, the Chamber of Commerce maintains that there is no equitable and predictable way for measuring the fair market value of NME imports.

As such, the Chamber believes that an injury determination should be the sole requirement for import relief in the case of NME products. As there will be no way to know whether an unfair trade practice exists under such a procedure, the injury standard should be higher than currently is the case under U.S. antidumping duty law, which relates to unfair trade practices, but lower than the "escape clause" standard of Section 201 of the Trade Act of 1974 where there is no unfair trade.

As unfair trade practice considerations are eliminated, the time period for relief should be shorter than under the present dumping procedures. Such accelerated relief should afford fair protection to domestic industry and the NME and should also lower the costs involved relative to dumping proceedings.

Like current law, a petition for import relief could be filed with the ITC by an entity, including a manufacturer, a trade association, a union or group of workers, which is representative of an industry. Once received, the ITC would begin an investigation to determine injury. As is currently the case in Section 201, the ITC should be required to address certain economic factors during its investigation.

In the event that the ITC finds injury, the Office of the U.S. Trade Representative (USTR) would be empowered to negotiate within a reasonable period an arrangement with the NME, through price increases and/or quotas, to remedy the injury. Should USTR fail to reach such an arrangement with the NME, USTR would still have the authority to recommend to the ITC a remedy for domestic industry.**/

Consideration should also be given of an appeal mechanism, whereby the affected domestic industry would have some recourse should it find the USTR-negotiated arrangement unacceptable. A

**/ Such procedures are not alien to NMEs. The accession agreements signed by the East European members of the GATT provide that in the event their products are being imported in such increased quantities or under such conditions as to cause or threaten serious injury to a member country, that member country may request consultations to remedy the injury through quantitative restraints, price increases or other actions. In the event the two parties fail to reach an agreement, the injured party is free to restrict the other's imports in order to remedy the injury.

procedure whereby the industry might appeal to the ITC to determine whether the arrangement would be adequate to remove the injury would be analogous to current law (Section 734 (h) of the Trade Agreements Act of 1979), whereby the ITC may be requested to review a suspension agreement negotiated by the Commerce Department to determine whether the injurious effect of the imports is completely eliminated by the agreement. There should be some Presidential discretion with regard to implementing the final ITC decision, but the discretion must be limited to very serious reasons, and should be clearly less than under the current market disruption provisions.

The approach being recommended by the Chamber is designed to provide simplicity, to lower costs, and to remove the near total unpredictability of the present system. It eliminates price-based determinations, because these are, by definition, not achievable with an NME. In its reliance on injury as the sole test for relief, the approach reflects compromise. The standard is set between current dumping and escape clause provisions. Such a median level of injury standard is appropriate since there is no way to determine whether an unfair trade action is present: a lesser standard would invite so many petitions as to retard trade; a greater standard would not adequately protect domestic industry.

Allowing USTR to negotiate a bilateral arrangement to remove the injury is consistent with the way an NME traditionally conducts its foreign trade. However, a role for the ITC in reviewing the agreement ensures the domestic industry of objective consideration of its situation. The accelerated pace of this new approach should also be appealing to U.S. industry since, under the current, more time consuming procedure, relief often arrives after the injury was most severe.

Mr. GUARINI. I would particularly like to take this occasion to thank TRAC and Ms. Hogan, who has worked with my office and provided some very good resource material and background information over a period of the last few years. I publicly want to thank you.

Ms. HOGAN. Thank you very much.

Mr. GUARINI. Thank you very much.

I would like to call the National Coalition on Agricultural Trade and Export Policy, Robert Delano, vice chairman; National Grange, Edward Andersen, master of the National Grange.

Gentlemen, take your places and give your testimony to the committee reporter, who will put your statements into the record. When you are ready, please proceed.

Mr. Robert Delano, will you proceed, from the National Coalition of Agricultural Trade.

STATEMENT OF ROBERT B. DELANO, VICE CHAIRMAN, NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Mr. DELANO. Thank you, Mr. Chairman.

My name is Robert B. Delano. I am vice chairman of the National Commission on Agricultural Trade and Export Policy.

It is a privilege to appear before you today in behalf of the National Commission on Agricultural Trade and Export Policy. The commission is greatly pleased, and tremendously reassured, by the intense congressional interest in trade matters this year.

American agriculture's welfare is inextricably bound up in its opportunities in world trade. Consequently, improvements in trade which your committee or other committees can achieve by legislation can directly benefit U.S. agriculture.

The commission, like you, has been laboring mightily during the past year to develop a comprehensive series of recommendations to improve U.S. agricultural trade. We are therefore grateful to you for this opportunity to indicate our views on trade legislation pending before your committee.

I will limit my remarks today to discussion of a select number of issues about which there is significant agreement within the commission and within agriculture generally.

The commission is pleased to note that all the issues raised here receive substantial treatment in the discussion draft of the pending legislation that has been distributed. The commission urges the committee to continue to develop its legislation along the general lines suggested in the discussion draft.

The issues I will raise can be characterized as follows: One, the adequacy and enforceability of GATT procedures relating to unfair trade practices and export subsidies; two, the adequacy of current U.S. Government responses to unfair trade practices and export subsidies; three, the need for explicit guidelines to govern goals and objectives of U.S. negotiators in respect to bilateral, plurilateral, and multilateral negotiations to eliminate or otherwise reduce the incidence of unfair trade practices and export subsidies.

The well-being of American agriculture critically depends upon our ability to achieve greater competitiveness in world markets.

Fully one-third of the acreage harvested in the United States today is devoted to the production of commodities that are exported.

Export earnings are a vital component of U.S. farm income. Receipts on exported commodities represented nearly 25 percent of all farm receipts in 1984.

But the importance of farm exports does not end at the farm gate. A tremendous array of related industries—processors, handlers and shippers—have a direct and fundamental stake in maintaining and expanding U.S. agricultural exports.

The value of the export-related services of these industries exceeded $45 billion in 1982. Farmers and agribusinessmen consequently share a common bond and commitment to the goal of enhanced U.S. export competitiveness.

A variety of factors has contributed to the recent decline in U.S. export competitiveness. Some of these factors, including the inhibitory effect of a strong U.S. dollar, are beyond the scope of today's deliberations. Others, such as the influence on trade of U.S. domestic farm policy, have been addressed in the 1985 Farm Act.

In relation to your committee's interests and jurisdiction, one factor is uniquely important and germane: the damaging impact of unfair trade practices, both barriers to trade and export subsidies, that artificially constrain our Nation's ability to capitalize on its basic comparative advantage to achieve greater national benefits through expanded exports of agricultural commodities and products.

In world agriculture, as in other trade-affected sectors of the world and U.S. economy, the notion of free and even fair trade is illusory. Unfair and predatory competition is the order of the day.

Consequently, the interests of agriculture, and of agricultural related interests and enterprises, demand a greatly more magnified effort to overturn foreign practices that are prejudicial to the achievement of worldwide economic benefit through the expansion of U.S. agricultural exports.

Agriculture's case is not unique, but its evidence is overwhelming. Seventy percent of all section 301 cases pending before the Office of the U.S. Trade Representative through the end of August 1984, by its own account, involved agricultural and agricultural related unfair trade practices.

The Annual Report of the President on the Trade Agreements Program, 1984-85, documents negotiations or other U.S. actions relating to unfair trade practices in agriculture and agricultural related activities involving a host of countries: Argentina, Brazil, Canada, the European Community, India, Japan, Mexico, New Zealand, Korea, Scandinavia, and Taiwan. Needless to say, this list could be substantially augmented through simplified procedures resulting from enhanced monitoring of the incidence of unfair competition.

The United States has always been at the forefront of efforts to liberalize agricultural trade. Virtually alone, it has taken necessary steps to modify its policies—both domestic and international—to place them in general accord with the premise of free market-oriented growth.

Reductions in U.S. price supports have repeatedly generated benefits to overseas customers, often at considerable cost to U.S. pro-

ducers. Acreage adjustment programs have stabilized world supply, at considerable cost in terms of U.S. export opportunities foregone.

The United States has acted in good faith and in the spirit of trade liberalization. In response, it has witnessed a heightening of unfair competition; a willingness to test the limits; and an avoidance of consideration of offsetting concessions.

It would appear that in agricultural trade affairs, at least, there are substantial drawbacks to the concept of unilateral disarmament.

Difficult times demand difficult actions. Fire must meet fire. Aggressive tactics are an absolute necessity, in trade negotiations and trade relations generally, if the United States is not to sacrifice its agricultural trade leadership.

In relation to your current deliberations, the commission recommends, at a minimum, that, one, explicit and binding requirements be laid down to govern goals and objectives of U.S. representatives to ongoing bilateral negotiations and general negotiations to reform the GATT.

I think to achieve these goals, the commission calls upon the committee to bind U.S. representatives to negotiate the following.

A, elimination or substantial reduction of constraints to fair and open trade in basic and value-added commodities to include tariffs, quantity limitation and non-tariff trade barriers, and predatory and unfair export practices. The commission is cognizant that allowance for and modifications in foreign and domestic agricultural policies must be taken into account in efforts to achieve the above objectives.

While the commission does not currently endorse the concept of negotiating U.S. domestic policies in an international forum, it recognizes that considerations of this nature must be placed upon the table if negotiations, particularly in the EC countries, are to bear results.

If U.S. domestic policy is to be discussed in future negotiations, U.S. negotiators should insist that domestic policies of competitive nations be subject to equal, if not greater, consideration.

B, expansion of GATT applicability to include services and intellectual property and other aspects of trade not currently addressed by GATT particularly as pertains to agricultural trade.

C, expedited dispute arbitration and settlement mechanisms within the framework of GATT. GATT dispute mechanisms are currently far too cumbersome and slow.

Guidelines contained in the subsidies and countervailing code, and I refer here to the sections, allowing signatory nations to take action to offset the economic impact of unfair export subsidies within a period of 180 days.

In practice, however, arbitration settlement of disputes takes much longer than the 180 days. For example, in the case of 301 with respect to actions on Mediterranean citrus, U.S. citrus producers waited 8 years to receive a positive GATT determination. A 301 complaint alleging EC wheat flour violations filed in 1975 received a final, if inconclusive, GATT finding only in 1984. In both cases, U.S. action is still pending as a result of the EC noncompliance with GATT findings and objections.

By comparison, the International Trade Commission and subsequent executive action in the countervailing and antidumping cases are subject to much more stringent and legally binding time constraints.

The commission recognizes that section 301 of the 1974 act was designed to provide for negotiated settlement of outstanding disputes. Nevertheless, we decry the intentional use by other countries of loopholes contained in the subsidies code to postpone or derail section 301 cases that are clearly justified by reference to precepts of fair and open trade.

D, achievement of tighter GATT enforcement powers and clarification of criteria related to unfair practices contained in the countervailing duties code. Achievement of tighter GATT enforcement powers must be an absolute requirement in any future trade negotiations if the GATT process is to remain at all effective in the agricultural trade arena.

The enforcibility of GATT ruling is undermined by the consensus nature of GATT decisionmaking, the veto power of signatories and the absence of buying requirements on signatories in the event of a finding of unfair export subsidization.

The ruling of unanimous consent should be eliminated. The current GATT process makes it too easy for GATT violators to sidestep that treaty obligation.

Current criteria contained in the subsidies code governing GATT definition of export subsidies needs greater clarification.

The subsidies code was intended to refine the definition of admissible and inadmissible act practices referred to in articles VI, XVI, and XIII of the GATT. In reality, however, the code provides a cover and lends an area of legitimacy to trade practices that are clearly in violation of fair trade concepts.

Export subsidies that apply to primary products should face the same restrictions as are currently applied to subsidies on nonprimary products. Every effort should be made to provide for specific prohibition of such subsidies regardless of the current criteria, which allows such practices in the event that their use does not result in exports above an equitable share of world markets.

Retaliatory powers of the U.S. Government should be enhanced to enable industries to obtain relief under section 301 and to stimulate greater cooperation towards dispute settlement within the GATT framework.

The USTR should be required to take retaliatory steps to counter the economic impact of unfair trade practices within 15 to 18 months of the filing of a section 301 petition except upon, A, determination by USTR that action with respect to the petition is unwarranted; B, determination by appropriate and binding GATT mechanisms that the U.S. position is unsubstantiated, and, C, agreement by the offending country to eliminate such practice.

In addition, USTR should be required to self-initiate section 301 cases without petition of effected domestic industries.

Enhanced unfair trade monitoring capability should be provided to USTR or to another appropriate agency to ensure that all unfair trade practices and export subsidies are subject to retaliation under section 301.

In summary, the short list of recommendations which the Commission proposes in response to the specific need of your committee at its current stage of consideration of trade reform, the Commission intends to make available to you more detailed proposals covering a wider area of programs and policies under your jurisdiction at a later date and before markup of your legislation.

Efforts to remedy unfair trade practices can only be seen as one step among many steps which must be taken if the United States is to restore itself to a position of unrivaled leadership in agricultural trade.

Equally significant emphasis must be given to efforts to stabilize exchange rates and reform the international monetary system. Indeed, the commission recommends the initiation of general negotiations on trade be preceded by evidence of substantial progress in efforts to stabilize the value of the U.S. dollar. As past experience has indicated, important benefits to the U.S. economy from resulting lowering of trade barriers can be offset by exchange rate values.

Negotiations on trade and monetary policy must be viewed in parallel if distinct paths to future U.S. competitiveness.

In the case of agriculture, monetary reform is at least as pressing a concern as the incident of unfair trade competition. In a similar vein, the commission takes this opportunity to suggest that proper consideration be given by Congress to inclusion of provisions expanding authority for agriculture export enhancement activities in any omnibus trade package approved by the House.

Due consideration should also be given to practical policies designed to assist debt-burdened Third World nations.

The commission salutes your committee's dedication to trade interests of the United States, and with your help, the benefits of agricultural trade will continue to serve the Nation.

Thank you.

Mr. GUARINI. Thank you, Mr. Delano.

[The prepared statement of Mr. Delano follows:]

Testimony of Robert B. Delano
Vice Chairman
National Commission On Agricultural Trade and Export Policy

Before the Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
March 21, 1986

INTRODUCTION

It is a privilege to appear before you today in behalf of the National Commission on Agricultural Trade and Export Policy.

The Commission is greatly pleased - and tremendously reassured - by the intense Congressional interest in trade matters this year. American agriculture's welfare is inextricably bound up in its opportunities in world trade. Consequently, improvements in trade which your Committee or other Committees can achieve by legislation can directly benefit U.S. agriculture. The Commission, like you, has been laboring mightily during the past year to develop a comprehensive series of recommendations to improve U.S. agricultural trade. We are therefore grateful to you for this opportunity to indicate our views on trade legislation pending before your Committee.

I will limit my remarks today to discussion of a select number of issues about which there is significant agreement within the Commission and within agriculture generally. The Commission is pleased to note that all the issues raised here receive substantial treatment in the Discussion Draft of the pending legislation that has been distributed. The Commission urges the Committee to continue to develop its legislation along the general lines suggested in the Discussion Draft. The issues I will raise can be characterized as follows:

1) The adequacy and enforceability of GATT procedures relating to unfair trade practices and export subsidies;
2) The adequacy of current U.S. government responses to unfair trade practices and export subsidies;
3) The need for explicit guidelines to govern goals and objectives of U.S. negotiators in respect to bilateral, plurilateral and multilateral negotiations to eliminate or otherwise reduce the incidence of unfair trade practices and export subsidies.

BACKGROUND

The well-being of American agriculture critically depends upon our ability to achieve greater competitiveness in world markets. Fully one-third of the acreage harvested in the United States today is devoted to the production of commodities that are

exported. Export earnings are a vital component of U.S. farm income. Receipts on exported commodities represented nearly 25% of all farm receipts in 1984. But the importance of farm exports does not end at the farmgate. A tremendous array of related industries - processors, handlers, and shippers - have a direct and fundamental stake in maintaining and expanding U.S. agricultural exports. The value of the export-related services of these industries exceeded $45 billion in 1982. Farmers and agribusinessmen consequently share a common bond and commitment to the goal of enhanced U.S. export competitiveness.

A variety of factors has contributed to the recent decline in U.S. export competitiveness. Some of these factors, including the inhibitory affect of a strong U.S. dollar, are beyond the scope of today's deliberations. Others, such as the influence on trade of U.S. domestic farm policy, have been addressed in the 1985 Farm Act. In relation to your Committee's interests and jurisdiction, one factor is uniquely important and germane - the damaging impact of unfair trade practices, both barriers to trade and export subsidies, that artificially constrain our Nation's ability to capitalize on its basic comparative advantage to achieve greater national benefits through expanded exports of agricultural commodities and products.

In world agriculture, as in other trade-affected sectors of the world and U.S. economy, the notion of free and even fair trade is illusory. Unfair and predatory competition is the order of the day. Consequently, the interests of agriculture - and of agricultural related interests and enterprises - demand a greatly more magnified effort to overturn foreign practices that are prejudicial to the achievement of worldwide economic benefit through the expansion of U.S. agricultural exports.

Agriculture's case is not unique, but its evidence is overwhelming. 70% of all Section 301 cases pending before the Office of the U.S. Trade Representative through the end of August 1984, by its own account, involved agricultural and agricultural related unfair trade practices. The Annual Report of the President on the Trade Agreements Program, 1984 - 1985, documents negotiations or other U.S. actions relating to unfair trade practices in agriculture and agricultural related activities involving a host of countries: Argentina, Brazil, Canada, the European Community, India, Japan, Mexico, New Zealand, Korea, Scandinavia, and Taiwan. Needless to say, this list could be substantially augmented through simplified procedures resulting from enhanced monitoring of the incidence of unfair competition.

The United States has always been at the forefront of efforts to liberalize agricultural trade. Virtually alone, it has taken necessary steps to modify its policies - both domestic and international - to place them in general accord with the premise of free market oriented growth. Reductions in U.S. price supports have repeatedly generated benefits to overseas customers, often at considerable cost to U.S. producers. Acreage

adjustment programs have stabilized world supply, at considerable cost in terms of U.S. export opportunities foregone. The United States has acted in good faith and in the spirit of trade liberalization. In response, it has witnessed a heightening of unfair competition; a willingness to test the limits; and an avoidance of consideration of offsetting concessions. It would appear that in agricultural trade affairs, at least, there are substantial drawbacks to the concept of unilateral disarmament.

RECOMMENDATIONS

Difficult times demand difficult actions. Fire must meet fire. Aggressive tactics are an absolute necessity, in trade negotiations and trade relations generally, if the United States is not to sacrifice its agricultural trade leadership. In relation to your current deliberations the Commission recommends, at a minimum, that:

1. Explicit and binding requirements be laid down to govern goals and objectives of U.S. representatives to on-going bilateral negotiations and general negotiations to reform the GATT. U.S. agriculture generally fears the growing tide of protectionism at home and abroad. It favors open markets for basic and value-added agricultural commodities. It supports limitation on the use of import restrictions, including arbitrary and capricious quality and health barriers that represent non-tariff trade barriers, and elimination of the use of export subsidies and other unfair trade practice. To achieve these goals, the Commission calls upon the Committee to bind U.S. representatives to negotiate the following:

(a) Elimination or substantial reduction of constraints to fair and open trade in basic and value-added agricultural commodities, to include:

(i) tariffs

(ii) quantity limitations

(iii) non-tariff trade barriers

(iv) predatory and unfair export practices

The Commission is cognizant that allowance for, or modifications in, U.S. and foreign domestic agricultural policies must be taken into account in efforts to achieve the above objectives. While the Commission does not currently endorse the concept of negotiating U.S. domestic policies in an international forum, it recognizes that considerations of this nature must be placed upon the table, if negotiations - particularly with EC countries - are to bear results. U.S. domestic policies are, by and large, more

consistent with fair trade objectives than are similar policies of other countries, particularly EC countries. If U.S. domestic policy is to be discussed in future negotiations, U.S. negotiators should insist that domestic policies of competitor nations be subject to equal if not greater consideration.

(b) Expansion of GATT applicability to include services, intellectual property, and other aspects of trade not currently addressed by GATT, particularly as they pertain to agricultural trade.

(c) Expedited dispute arbitration and settlement mechanisms within the framework of GATT.

GATT dispute mechanisms are currently far too cumbersome and slow. Guidelines contained in the Subsidies and Countervailing Duties Code (Agreement on Interpretation and Application of Articles VI, XVI, and XIII of the GATT) allow signatory nations to take action to offset the economic impact of unfair export subsidy practices within a period of 180 days, subject to positive determinations at various levels of decision-making. In practice, however, arbitration and settlement of disputes take much longer. For example, in the case of a U.S. 301 action with respect to EC preferences on Mediterranean citrus, U.S. citrus producers waited eight years to receive a positive GATT determination. A Section 301 complaint alleging unfair EC export subsidies on wheat flour filed in 1975 received a final, if inconclusive, GATT finding only in 1984. In both cases, U.S. action is still pending as a result of EC noncompliance with GATT findings and directives.

By contrast, determinations of the International Trade Commission and subsequent Executive action in countervailing and anti-dumping cases are subject to a much more stringent and legally binding time constraint. The Commission believes that time constraints and procedures under Section 301 of the Trade Act of 1974 should be no less binding than legislatively mandated requirements under Section 201 - 203 of the 1974 Act, and Section 337 and Title VII of the 1930 Tariff Act. To encourage timely action on 301 cases, the U.S. Trade Representative should be required to take retaliatory action against nations utilizing unfair trade practices within 15 to 18 months of the filing of a 301 petition, except if (a) he determines within such time that action in respect to the 301 petition is unwarranted; (b) determination is made by appropriate and binding GATT mechanisms that the U.S. position is unsubstantiated; or (c) agreement is

entered into with the offending nation to eliminate such practices.

The Commission recognizes that Section 301 of the 1974 Act was designed to provide for negotiated settlements of outstanding disputes. Nevertheless, we decry the intentional use by other countries of loopholes contained in the Subsidies Code to postpone or derail Section 301 cases that are clearly justified by reference to precepts of fair and open trade.

(d) Achievement of tighter GATT enforcement powers, and clarification of criteria relating to unfair practices contained in the Subsidies and Countervailing Duties Code.

Achievement of tighter GATT enforcement powers must be an absolute requirement in any future trade negotiations if the GATT process is to remain at all effective in the agricultural trade arena. The enforceability of GATT rulings is undermined by the consensus nature of GATT decision-making, the veto power of signatories, and the absence of binding requirements on signatories in the event of a finding of unfair export subsidization. The rule of unanimous consent should be eliminated. The current GATT process makes it too easy for GATT violators to sidestep their treaty obligations. The process should be undergirded by automatic and admissible retaliatory actions that are binding on all GATT signatories.

Current criteria contained in the Subsidies Code governing GATT definition of export subsidies needs greater clarification. The Subsidies Code was intended to refine the definition of admissible and inadmissible trade practices referred to in Articles VI, XVI and XIII of the GATT. In reality, however, the Code provides cover and lends an air of legitimacy to trade practices that are clearly in violation of fair trade precepts.

Export subsidies applied to primary products should face the same restrictions as are currently applied to subsidies on non-primary products. Every effort should be made to provide for specific prohibition of such subsidies regardless of the current criteria, which allows such practices in the event that their use does not result in exports above an "equitable share" of world markets.

2. Retaliatory powers of the U.S. government should be enhanced to enable industries to obtain relief under Section 301 and to stimulate greater cooperation towards dispute settlement within the GATT framework. The U.S. Trade Representative should be

required to take retaliatory steps to counter the economic impact of unfair trade practices within 15 to 18 months of the filing of a Section 301 petition, except upon (a) determination by USTR that action with respect to the petition is unwarranted; (b) determination by appropriate and binding GATT mechanisms that the U.S. position is unsubstantiated; or (c) agreement by the offending country to eliminate such practice. In addition, USTR should be required to self-initiate Section 301 cases upon evidence of unfair trade practices and without petition of affected domestic industries. Enhanced unfair trade monitoring capabilities should be provided to USTR or to another appropriate agency to ensure that all unfair trade practices and export subsidies are subject to retaliation under Section 301.

SUMMARY

The short list of recommendations which the Commission proposes comes in response to the specific needs of your Committee at its current stage of consideration of trade reform. The Commission intends to make available to you more detailed proposals, covering a wider area of programs and policies under your jurisdiction at a later date, but before mark up of your legislation.

Efforts to remedy unfair trade practices by resort to retaliation and with regard to bilateral and multilateral negotiations, including GATT, can only be seen as one step, albeit important, among many steps which must be taken, if the United States is to restore itself to a position of unrivalled leadership in agricultural trade. Equally significant emphasis must be given to efforts to stabilize exchange rates and reform the international monetary system. Indeed, the Commission recommends that initiation of general negotiations on trade be preceded by evidence of substantial progress in efforts to stabilize the value of the U.S. dollar. As past experience has indicated, important benefits to the U.S. economy that result from a lowering of trade barriers can be substantially offset by uncontrolled swings in exchange rate values. Negotiations on trade and on international monetary policy must be viewed as parallel, if distinct, paths to future to U.S. competitiveness. In the case of agriculture, monetary reform is at least as pressing a concern as is the incidence of unfair trade competition.

In a similar vein, the Commission takes this opportunity to suggest that proper consideration be given by Congress to inclusion of provisions expanding authority for agricultural export enhancement activities in any Omnibus trade package approved by the House this year. There is always a need for enhanced U.S. agricultural market development activities. These programs are a valuable investment in our Nation's future trade competitiveness. The Commission recommends that expanded authority for export enhancement, market development, and food aid programs be included in the final package of trade reform approved by Congress. Due consideration should also be given to practical policies designed to assist debt-burdened Third World nations.

The Commission salutes your Committee's dedication to the trade interests of the United States. U.S. agriculture is charting a new course in the markets of the world. With your help -- and through the efforts of untold American citizens who manage and maintain our farm and food system -- the benefits of agricultural trade will continue to serve the Nation.

Mr. GUARINI. The committee thanks you and your National Commission on your testimony, and the Chair will be turned over to Mr. Donald Pease of Ohio.

Mr. PEASE [presiding]. Thank you.

Mr. Andersen, would you like to proceed.

STATEMENT OF EDWARD ANDERSEN, MASTER, THE NATIONAL GRANGE, ACCOMPANIED BY ROBERT HAMPTON

Mr. ANDERSEN. Yes, Mr. Chairman, thank you. I am Edward Andersen, master of the National Grange. I also serve as a member of its commission on agriculture, trade and policy.

I have with me Mr. Robert Hampton, who is our specialist in foreign trade, and he will work on those questions that deal with many of the detailed parts of GATT and so on.

First of all, I would like to say that I am a farmer at Waterloo, NE. I have been in this position for 6 years now as a master of the Grange, but I still have my farm and today it is being operated by my son-in-law.

It is very nice to have a job that pays so I can afford to continue farming. Certainly, it has been very difficult the last 6 years.

We are very much a part of your efforts on behalf of foreign trade and your recognition of the vital role it plays in every industry in this country, but especially to the agricultural community.

Today, we recognize that approximately 35 percent of our total production moves into a foreign market, so, of course, to some detail, it does affect every walk of life out here in the rural American area, much less the producer. Every farmer in some way is in touch with foreign trade, whether it is his direct or indirect connection.

We recognize when we are working with foreign trade, we have to work with the State Department, the Defense Department, Department of Commerce, Treasury, and so on, all of these people have a role to play in your or my ability to export U.S. production.

We recognize that interaction is very important to the security of the country, certainly to the welfare of all the people in this country. However, we also recognize that as a whole, agriculture continues to lose that percentage of its share of the international market we used to enjoy.

We think it is very important to put something in place that will allow us to reclaim some of that lost share of the world market.

We recognize there is more competition out there, but we also recognize that we should be in that competition.

We certainly urge the Congress to give the authority to the President that allows him to renegotiate the GATT agreements. And, of course, we are very happy that Special Trade Representative Clayton Yeutter is there, who recognizes the great amount of activity—we recognize the activity he has created, particularly when we talk about 301 cases he has brought to the forefront. We think this is, of course, long overdue and we are happy to see him in that position, and taking hold of that issue.

We recognize one of the major problems we have with our trade negotiations is the fact that what is a subsidy is the question that—no one seems to have a definition as to what that meaning

is. That has to be clarified. We think that is very, very important and one of the most important things that can be coming out of the new negotiations.

We also recognize, as most of us have already said, that the value of the dollar is one of those things that must be recognized as a hindrance at times to our ability to export anything much less export agricultural commodities.

We think it is very important that somewhere along the line this country with the other major currency countries in the world are able to sit down and work out some type of exchange rate and some type of formula that if the dollar or any part of the currency out there moves up or down within a certain range, then it is going to trigger something else to happen. It may be an artificial thing but it is very important that we give recognition to that.

We must find a way to keep the currencies in this world on a very level basis, at least very nearly level.

Another example of what we are looking at are violations of GATT. That is another thing we continue to work with.

The most recent one, of course, is the fact that Spain and Portugal at this time are entering into the European Community, and of course this will be phased in over a period of years. But at the present time, they are in direct violation of international trade law under GATT, which requires them to negotiate with whoever is going to be injured by that move into the EC, and at the present time, our producers in this country in feed grain and soybeans are going to be injured. They have not at this time indicated any intent to negotiate those things away.

So these are the things that are of primary concern. Open the GATT up; give the President the authority and instruction to deliver a strong trade package on behalf of everyone in this country, but certainly agriculture.

Do what we are able to encourage the STR to continue to push forward on the 301 cases and do his best to strengthen those rules and regulations we operate under in GATT, particularly recognizing what a subsidy is, what a trade subsidy is and identify it and make everybody adhere to it if possible.

At this time, I would answer whatever questions you may have. Thank you again for the opportunity to be a part of your hearing.

Mr. PEASE. Thank you very much, Mr. Andersen. We appreciate your testimony.

[The prepared statement follows:]

SUMMARY OF STATEMENT
TO THE
TRADE SUBCOMMITTEE
COMMITTEE ON WAYS & MEANS
U. S. HOUSE OF REPRESENTATIVES
BY
EDWARD ANDERSEN, MASTER
THE NATIONAL GRANGE
MARCH 21, 1986

The National Grange, representing more than 400,000 members in farm and rural areas of the U.S., is greatly concerned at the sharp decline in agricultural exports in recent years.

Our farm sector, and our Nation, badly need relief for critical trade problems that result from unfair trade practices, depressed economies in many foreign nations, and the difficulties arising from our budget deficits and international monetary problems.

Congress should encourage and reinforce recent stepped-up efforts to deal with export subsidy and other unfair trading practices that have so greatly damaged farm export markets. Relief under Section 301 of the Trade Act of 1974 has not been satisfactory, and that section should be strengthened in a fashion which would bring benefits rather than risks of retaliation.

A new round of multilateral negotiations under the General Agreement on Tariffs & Trade (GATT) is desirable, with provisions that agriculture should be a high priority element of this Round. A meaningful export subsidy code to move toward elimination of such practices in agricultural and all trade, along with workable dispute settlement procedures and provisions for compliance are among the major goals which a new trade round should achieve. There should be a concurrent effort to deal with instability and other shortcomings of the international monetary system.

We are greatly concerned with trade problems in steel, textiles, automobiles, and other sectors with strong implications for farm export opportunities. We also ask for strong Congressional support to see that actions of the European Community do not violate international agreements at the expense of our farm exports to Spain and Portugal during their accession to the E.C.

Finally, we commend this Subcommittee and the Congress for its strong interest in these critical trade problems. Our trade negotiators should maintain continuous and effective consultation with Congress and the private sector during all negotiations in order to obtain maximum benefits from such efforts.

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I am Edward Andersen, Master of The National Grange, a general farm organization which represents more than 400,000 members in farm and rural areas in 41 states. Since its beginning in 1867, The National Grange has been deeply concerned with our national interests as well as with the special and vital interests of the agricultural economy and rural America.

Our farmer members produce a wide range of commodities, which range from the grain crops that are such a major part of world trade to the many specialty crops that are grown for nearby markets. All of these farmers are greatly affected, directly or indirectly, by the stability and the health of the world trading system.

Our American farmers, many of whom are currently in severe financial difficulties, are greatly concerned that U.S. agricultural exports have been in a sharp decline from a $44 billion level in 1981 to $31 billion in 1985. We must reverse this trend in order to slow the rate of failures and foreclosures that are bringing such distress and economic disaster to rural areas across the Nation.

We appreciate the leadership of this Committee in focusing attention on the significance of the trade deficit and on our need for dealing more effectively with our serious international trade and monetary problems. Like other Americans, farmers as producers and consumers are being hurt badly by the inequities in the world trading system, by the depressed economies of many of the world's nations and by other factors that are largely beyond their control.

In its efforts to deal with our declining farm exports and other critical trade problems, Congress should seek both short and long-term remedies. To meet unfair trading practices, such as the growing use of export subsidies in recent years, our government must offer assistance of an adequate amount

to counteract loss of markets that is caused by such subsidies. The severe cuts in the President's FY 1987 budget for farm export expansion programs, with a proposed reduction of more than 35 percent from the funds mandated in the 1985 Farm Bill, are a heavy blow to our hopes for regaining lost markets. The budget proposal to cut the funding for the highly successful market development programs of the Foreign Agricultural Service by 50 percent is astonishing, in view of the widespread praise for these widely-admired cooperative programs with matching funds from farmer and exporter groups.

Efforts of our U.S. Trade Representative to gain more open access to foreign markets that unfairly restrict our farm exports must be intensified. The more aggressive moves to gain trade relief for farmers and other exporters in recent months through the use of Section 301 of the Trade Act of 1974 is a step in the right direction, and we urge Congress to use its maximum influence to sustain and expedite this type of activity. The major trade bills that are now pending in Congress have a wide variety of proposals to "reform" or "strengthen" Section 301. We strongly approve of measures that will accomplish such improvements in a way that is consistent with our international agreements and obligations and that does not represent more threats to trade disruption than hope for trade relief. "Reforms" that would bring retaliation against U.S. agricultural exports would obviously be undesirable. Appropriate, improved procedures for dealing with these unfair trade barriers more promptly through negotiations would be highly desirable.

We support multilateral trade negotiations establishing reasonable and effective time limits on GATT dispute settlement proceedings. We believe that the time limits that are proposed in H.R. 3777 would be too short to allow

adequate time for investigation and maximum effectiveness of negotiation of Section 301 issues. We would support consideration of establishment of time limits for Section 301 proceedings that would correspond to such time limits as might be established for GATT dispute settlements as a result of a new MTN round.

We believe that trade law "reforms" should be aimed at strengthening U.S. negotiating procedures, with the longer-term objective of broadening the GATT prohibitions against trade-distorting practices and improving GATT dispute settlement and compliance procedures. It is noteworthy that Section 301 was designed as a tool for resolving trade disputes through negotiation rather than retaliation, but it has worked very poorly for agriculture in recent years. More aggressive efforts by our negotiators, along with a greatly strengthened international export subsidy code, are needed to allow Section 301 to serve as the kind of tool that it was intended to be.

The National Grange strongly supports the growing momentum of support for a new GATT round of multilateral trade negotiations. There should be a concurrent effort to deal with instability of the international monetary system. Agriculture should be an integral and high priority aspect of such negotiations, with particular emphasis placed on the need for fully including agricultural exports in a strengthened agreement to limit and eventually prohibit undesirable subsidy practices. We urge Congress to take early action to give the President the full authority he will need to conduct such a negotiating round aimed at market-opening improvements which will be of maximum benefit to our farmers, our nation, and the world's economy. We support proposals for the inclusion of new areas in this next GATT Round, including services, investments, and high technology and "intellectual property" issues. Continuous and effective

consultations with Congress and the private sector is an important requirement for effective conduct of a new GATT Round.

We have an overriding concern with the problems that Congress and the Administration face in dealing with critical and longstanding trade problems in steel, textiles, automobiles and other such sectors which have great implications for agriculture. Excessive or inappropriate measures in dealing with those problems can seriously threaten U.S. farm export opportunities either through retaliation or through lowered purchasing power of some nations which are potentially much heavier buyers of U.S. agricultural products. Our current problems with our best economic and political ally, the European Community, are especially sensitive in this respect. We must act vigorously, yet judiciously, to assure that U.S. interests are adequately protected during the accession of Spain and Portugal to the E.C. Their abrupt threats to limit U.S. soybean, corn and other farm exports as a condition of E.C. expansion, in violation of GATT agreements and without due consultation with the U.S., are a matter of grave concern to U.S. agricultural trade interests. I would like to submit for the hearing record a letter that is being sent to President Reagan expressing the breadth of this concern.

In summary, we encourage and will work in all possible ways to assist the members of this Subcommittee and all Congressional trade leaders in efforts to deal with our problems of declining agricultural exports and other urgent trade problems. We believe that the most important Congressional role is to further encourage and strengthen the increasing efforts of our U.S. Trade Representative to more promptly implement provisions of Section 301 and other key trade relief measures. Furthermore, the Administration should be given early and broad authority to initiate a GATT Round in order to extend and

expand our international agreements toward restriction and removal of trade-restrictive practices that have been so damaging in recent years to our farm exports and the U.S. trade balance. International monetary arrangements should be seen as an integral part of the problems of the international trading and economic community.

We would also like to submit for the record a list of eight broad trade principles which have been formulated by the World Trade Forum and endorsed by the enclosed list of 91 organizations as desirable guidelines for formulation of U.S. trade policy and for our legislative and other programs that are designed to deal with our trade problems.

Thank you for this opportunity to appear today to express our views.

Mr. PEASE. There are a couple things I am interested in. Clearly, U.S. agriculture has a big stake in expanding exports. Agriculture has been our most important exporter area now for a number of years. I would gather that most of you—both of you are in favor of clearing away barriers to our exports going overseas. That almost goes without saying.

What is your attitude toward imports? I have had the sneaking suspicion that the farmers in my area who are big supporters of exports are not so quite enthusiastic about imports.

Particularly, I have had discussions with them about imports of agricultural products—of dairy products, rather, which they are not very happy about, and I remember they were particularly unhappy about the prospect that Cargill, I think it was, might be importing some grain from South America. It seems to me that the big danger over the next couple years is depressed farm prices, especially for grain, and that if U.S. companies like Cargill can start importing grain from South America, that would further depress the U.S. domestic price.

But normally trade is looked upon as a two-way street: If we are going to encourage exports, we can't curb imports at the same time.

Do you think that is a dilemma and if so, do you have a solution to that?

Mr. ANDERSEN. Certainly we recognize that this is a very difficult problem, particularly in the dairy end of it. We don't claim to be that competitive in the dairy industry in this country with many of the countries around the world.

However, when we talk about the dairy or any other agriculture products coming into this country in recent years, the reason they have been able to do that is because of the high value of the dollar primarily. This exchange rate got out of kilter. This is the major reason it was able to be drawn in.

This is why I suggested earlier that the exchange rate must be taken care of if we are going to have a trade policy that will be equal for everyone.

As far as being competitive, we believe we can be competitive with these other nations provided that we have those types of problems taken care of, such as the exchange rate, political embargoes, because political decisions are present in many, many countries.

We can't overcome those political decisions, but given the same set of circumstances, we believe that we can compete fairly with almost all the production around the world, certainly of the major producers of the commodities such as the wheat and feed grains and soybeans, livestock and dairy.

Dairy will be a very difficult one. But again, if the exchange rate is back in place and removes the political barriers, we will be OK there, too.

Mr. PEASE. I appreciate that. But in the real world, we hope we will get the exchange rate situation under control. We hope we will not have, say, political decisions and stopping other goods from coming in for that reason.

But if that is not the case, say the exchange rate doesn't get to where you want it to get, and that we are still being faced with imports of dairy products, grain, and American companies are

seeking to import them, producers overseas are quite willing to provide the product, would it be the position of the Grange, for example, that we ought not to restrict agriculture imports in any way?

Mr. ANDERSEN. No, that would not be the position of the Grange. Our position would be this, though, that if there are no subsidies within the price structure of the products that come into this country, we would be happy to compete with them on that basis, but that has to be the first criteria, recognizing there are no subsidies coming along that price structure.

The other things, of course, we would have to go back to everything, whether it is agriculture or other products, certainly in agriculture, that is, that the quality and inspection service and this type of thing that will guarantee the quality and the consumption of that product have to be ensured.

Mr. PEASE. You would be in favor of not restricting imports of unsubsidized products.

Would you leave the decision as to whether they are subsidized or not up to the normal proceedings under 301, for example?

Mr. ANDERSEN. I think it is the best system we have in place at this time and we should continue to use it. Certainly, as I indicated earlier, Mr. Yuetter has made quite a difference in that office and there has to be somebody to pursue it vigorously.

Mr. PEASE. Mr. Delano——

Mr. DELANO. Mr. Chairman, I think Mr. Andersen has covered most of the parts of it.

Section 22 gives us protection for domestic programs. I think any country in the world recognizes that from a domestic standpoint, politically, within the country you have to protect some domestic programs that you have, and see there is no unfair competition to the producers of those programs.

I had thought that we had section 201 and section 301, and that we were sort of protected by them, or say they were avenues that producers could pursue, but I guess I am coming to the point and questioning now whether they really work or not.

One of the problems with 301, particularly, is the extreme cost involved with the industry. The producers of that industry bring those cases before the International Trade Commission and very few industries can afford such costs. Then after you bring it before, there is a ruling against you possibly, and I think most of the producers now are getting to the point where, you know, what is the use of bringing anything under 301 or 201 because of the prohibitive costs.

Mr. PEASE. Mr. Delano, in your testimony you list a number of objectives which you believe Congress should bind U.S. representatives to negotiate on agriculture.

Mr. DELANO. Yes.

Mr. PEASE. Would your organization be willing to see some U.S. agricultural trade barriers such as section 22, which you mentioned removed in return for foreign concessions on agriculture?

Mr. DELANO. Well, I don't know how to respond to it, to a hypothetical situation in a way. It is difficult to know what to—you know, what would be on the table for negotiations. Until you are

faced with those decisions of what is on the table, you don't know how to respond.

I know the discussion of the commission has been that the Trade Act should be as strong as possible and give the President and/or the U.S. Trade Representative strong backing in achieving what is contained in the trade legislation.

It would give him a stronger negotiating hand in negotiating points that are contained in the trade package.

Mr. PEASE. I was interested in the testimony and encouraged by the testimony of both of you in support of section 301 language. You both think the committee ought to encourage greater use of 301, self-initiation, strengthening of procedures, and so on; is that correct?

Mr. ANDERSEN. I think that is correct. Our only advice to it would be again to make sure the timetable is adhered to and perhaps even shortened.

These go on for years and years. And we don't think it is in the best interests of anybody, whether we are bringing the complaint or somebody else. There ought to be some framework set that certain things have to happen within so many days.

Mr. PEASE. Mr. Andersen, you say that you strongly approve of measures that will accomplish improvement in section 301, "In a way that is consistent with our international agreements and obligations, and that does not represent more trade disruption than hopefully trade relief."

In general, we would all agree with that, I believe. In the 301 area, there are some situations where it is clear we can act under 301. There are others where under the GATT, it is not quite so clear.

Some people would be inclined to push a little bit into that uncertain area to probe to see how far 301—whether it can be stretched further than it is now.

Do I take your testimony to mean that you would be reluctant to do that sort of pushing out of the boundaries of 301, that you would be a strict constructionist in that area, perhaps?

Mr. ANDERSEN. I am not even sure I know what the answer should be to that. I will say this, that most of the time when we hear of these types of cases coming up in the 301 area, we end up talking about retaliatory action. We like to be able to say that certainly there must be some other action that is available that will be a plus for both groups.

There must be alternatives if we are willing to sit and negotiate. There should be a benefit to both sides. We think retaliation ought to be a word that is completely removed from this part of the trade a law.

I am not sure that is being practical, however, but we think it is something we should strive for and put that type of effort forward.

Mr. PEASE. Mr. Delano, do you have any comment on the advisability of stretching the 301 language a bit, trying to cover some practices that are not now clear under GATT?

Mr. DELANO. Well, I think Mr. Andersen responded that we did—we have comments relative to the definition of what a subsidy is today. I think we need a strong definition which would really broaden the interpretation of a subsidy.

We have things that come along that maybe were not in existence 20 years ago when we talked about subsidies, such as service subsidies, such as the fluctuation in currency rates and others. I think they should be taken into account in consideration of the Trade Act.

Mr. ANDERSEN. Could I ask Mr. Hampton to respond to that? I think he may have a better understanding of what other options might be.

Mr. PEASE. Sure.

Mr. HAMPTON. There are two or three levels, Mr. Pease, of great concern about the use of 301 in agricultural exports and of course, we have had very bad experience for several areas.

One, we welcome the new initiatives, more aggressive efforts being taken by the administration already to initiate those complaints, but in the field of agriculture, the Tokyo Round was rather unsuccessful in coming up with a useful definition of what constituted an export subsidy for a primary product. It is a slippery term that is hard to pin down, equitable share of the market; it is not satisfactory.

The need to make meaningful definition of export subsidies for primary products is overriding in our area. Beyond that, there are too many loopholes in the procedures for dispute settlement within the GATT to deal promptly enough with that.

Those are the areas that I think are of most meaning to our concerns about 301.

Mr. PEASE. Finally, let me turn to the section 201 for a minute. The committee draft, serving as the basis for discussion as we look at a new trade bill, under 201 would have special emergency provisions for perishable agricultural commodities.

Do you believe that that is a constructive direction for us to go?

Mr. ANDERSEN. Certainly this would be one of the primary differences as we look at the dairy industry, because a very large percent of that is a perishable product.

I think the other thing we have to keep in mind when we look at the dairy industry, primarily, and this is true of some others, and that is that this country, like any other, doesn't want to get ourselves in a position that we have to depend on some foreign nation for any major part of any one of our food products. This is really where the dairy industry stands.

However, we have to recognize that we cannot compete at this time at the level of production costs in this country. We are not able to compete on a worldwide basis.

But as far as the 201 is concerned, I think we have to recognize the perishable product is very definitely in need of consideration. It has to be.

Mr. DELANO. I would say amen, sir.

Mr. PEASE. Thank you.

Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman.

I would like to thank both of the witnesses for their testimony. I am sorry I was not here when the discussions began, but I do notice that Mr. Delano devoted a good deal of his written testimony to the need for the dispute mechanism, for improvement in that dispute settlement mechanism, which another witness just referred

to, and reminded us that the definitions are unsatisfactory, and of course that should encourage the Congress not to pursue what I think is an unwholesome desire to make unilateral definitions of "subsidy," which are likely to bite us eventually when others apply them to us in the ways we would like to define them.

I think it is important for us to provide more specificity and more certainty in our international agreements so that we will know what is a subsidy and what is not subsidy with a good deal more certainty than we do today.

Mr. Delano, I understand that you also talked a little bit about the problems of accession of Spain and Portugal.

Mr. DELANO. Mr. Andersen spoke of that.

Mr. FRENZEL. Oh, that was the other gentleman OK.

I presume that you foresee some problems there with some of the suggestions of the EC as to transitional tariffs and so on. Does that bother your members, too?

Mr. ANDERSEN. I am not sure what that term means in this particular case.

Bob, do you want to respond to it?

Mr. HAMPTON. I am sorry. I am not completely certain what your question was, Mr. Frenzel.

Mr. DELANO. Well, I will respond, if you want.

Mr. FRENZEL. Please.

Mr. DELANO. I didn't refer to it. Mr. Andersen referred to our concern, the commission's concern, and I think all of the farmers and ranchers in the United States' concern to Portugal and Spain coming into the European Community. We have substantial markets in soybeans and in corn and in many other commodities.

Of course, our concern is that we would maintain the market there for a phase-in period of time, particularly as relates to Spain, and our long-term concern is the competition that will occur and is occurring between olive oil and soybean oil, where I think the writing on the wall is there unless we are able to negotiate the demise of the soybean oil market in the European Community because olive oil, they have tons or lakes of olive oil and that will be the subsidies for soybean oil.

These are some of the concerns.

Mr. FRENZEL. I think, however, the EC has suggested that in certain areas where no tariff exists between us and Spain and Portugal, that at least transitional tariffs be imposed. In other areas where one would expect the tariff to decline to zero under the EC system, they have suggested a phaseout.

The worst of all is that they have suggested that the EC should have some kind of claim on the Spanish and Portugese market with a specific set aside, which, of course, is contrary to all the principles that we know of. I think the U.S. Government is taking the proper position, but it is going to be a problem to try to convince the EC that this is either the wrong course or that they owe us some compensation which we are going to be pretty tough about if they go forward with this idea.

Mr. ANDERSEN. Mr. Frenzel, Bob and I were talking instead of listening so we didn't catch the full meaning of your question. He would like to comment on that.

Mr. FRENZEL. Please, I would love to have him do so. I'm sorry I missed his first statement.

Mr. HAMPTON. Mr. Delano has expressed another major concern we have with the European approach to this problem, and that is the fact they have shortcut the producers. They have violated some of the agreements that we have, and furthermore, they have not gone through the proper channels of consultation with us on what competition we should be given for what steps they are entitled to take and so we are objecting strongly to that.

Of course, we are reminded of the old chicken war of the 1960's when the compensation, unfortunately, didn't do much good to the people who were hurt in U.S. agriculture, and that is a chronic dilemma. But we certainly want all the help we can get from Congress, and calling attention to the Europeans that they need to live up to their agreements and not extend the policy that they have had for many years of restructuring their agriculture at the expense of America and other agricultural suppliers from abroad, and we just want to make that point very forcefully.

Mr. FRENZEL. Well, as both of you have pointed out, the building of a responsive dispute settlement mechanism is absolutely critical in all of these endeavors. We are going to have a lot more disputes before we have less.

Certainly the U.S. agricultural community, having languished through a dozen years of wheat flour and perhaps a like amount of citrus problems, problems where decisions simply are not made or are not followed up by the EC, was a real area of concern.

I am delighted that you pointed that out as being at least among the most important negotiating goals of the United States as we go forward into a new GATT round.

Mr. HAMPTON. I think it is important to add that when we talk about dispute settlement, I hope that term is used to include some kind of clear-cut provisions for compliance and clear-cut statements as to what penalties or compensations are out in case those compliance procedures are not followed.

Mr. FRENZEL. Sure. When the GATT panel makes the decision, if the party of whom some action is required under that decision doesn't accept it, nothing happens. So it is a kind of discouraging process to go through if it doesn't work.

Well, I appreciate your testimony, and I thank you very much and I yield the balance of my time.

Mr. PEASE. Thank you very much to all of you. We appreciate your coming today, and we will pay a great deal of attention to your testimony. It is excellent testimony.

Mr. ANDERSEN. Thank you.

Mr. PEASE. Our next and final panel for the day will be composed of Mr. Horace McDonell, Jr., representing the American Electronics Association; and Mr. Vico Henriques, representing the Business and Computer Manufacturers Association.

Gentlemen, please come to the table.

Mr. McDonell, would you proceed.

Mr. IVERSON. Mr. McDonell is due to walk through the door any moment. I am Dick Iverson, president of the American Electronics Association, and with your kind permission, if you would like to

ask Mr. Henriques to start, perhaps Mr. McDonell will be here. Otherwise, I will deliver it.

Mr. PEASE. We will be happy to do that. We are well familiar with the problem of not arriving quite on time for hearings and speeches on the House floor.

Mr. Henriques, we will be happy to start with you.

STATEMENT OF VICO E. HENRIQUES, PRESIDENT, COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

Mr. HENRIQUES. Thank you, Mr. Chairman.

I am here to discuss the comprehensive trade reform legislation. As you probably know, CBEMA is an association of companies in information processing, business and communications products supplies and services.

Its members had combined sales of more than $135 billion in 1984. They employ more than 1.6 million people worldwide and in 1985, the U.S. computer and business equipment industry had a trade surplus of $4.5 billion.

Our views are the product of 2 years of deliberation which culminated in a workshop in Annapolis last week and they are a consensus of the CBEMA members. Also, at that meeting we developed a paper entitled "Foreign Trade Barriers to CBEMA Company Exports," which I have attached to my written statement.

Let me return to the principal subject. I want to emphasize that the balance of trade figure that I gave, $4.5 billion, is significant and it is different from many other sectors in the industry. But it rests, like the many other successes of our industry, on two factors.

The first is access to international markets so that we can sell our exports. The second is access to international markets so that we can purchase low-cost parts and components that make our products competitive.

The competitive health of our industry rests on an international open trading system. To preserve this, the United States must first avoid protectionist measures. Adding tariffs or imposing quotas for parts components we import would mean that U.S. products would be more expensive and less competitive on the international market. The possibility of starting retaliatory trade wars through protectionist measures is real.

Second, we must open those international markets where our access is limited, or where our products are unfairly closed out. I urge that the goal of this subcommittee be to solve the trade deficit problem without beginning protectionist trade wars. But I suggest that alterations to current trade laws do not go to the heart of the problem.

The only way we can open more markets to U.S. products while at the same time avoiding the problems of protectionism is through high-level bilateral or multilateral talks. These talks must be focused on specific issues and conducted in an atmosphere in which the parties involved have a high commitment to success.

You might ask why I emphasize negotiations over alterations to the current law. There are four reasons.

First, the trade barriers to our products cannot be solved by altering current trade remedies, but there is clear evidence those barriers yield to negotiation.

Second, trade remedies are often implemented after the injury occurs, limiting the beneficial effects for relief to the industry in question. Remedies like import relief have not provided injured firms the means to return to competitiveness.

Third, altering trade remedies can create new problems for the industry.

And, fourth, competitiveness, the key to international market success, is far more affected by Government policies such as regulation and tax structure than by trade law.

I have submitted in my written statement details of backup of each of those four statements. In addition, my statement mentions a number of current trade remedy proposals we specifically oppose along with a few that we support.

But no matter how refined the trade laws, they will not give us a significant boost toward a positive economic future. At best they can serve as backdrop to much needed negotiation with individual trading partners on specific problems.

Of course our negotiators need something to negotiate with. Flexible tools applied with analysis and discretion after substantive consultation with the affected industry are required.

We look forward to working with your committee to develop intelligent and imaginative solutions for particular problems. Let's not fall into the trap that says that the laws requiring retaliation are the only way to get our trading partners in line. On the contrary, we think such laws are the buttons that, when pushed automatically, threaten to begin a series of international objections that could blow apart the trading systems, and result in a poorer economic climate for both the United States and the world.

Negotiation—not mandated, automatic retaliation—is the way to avoid devastating worldwide trade conflicts. Negotiation, not retaliation, is the way to build a better worldwide economy.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF VICO E. HENRIQUES, PRESIDENT, COMPUTER & BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

I am Vico Henriques, President of the Computer and Business Equipment Manufacturers Association (CBEMA). I am here today to discuss our views on comprehensive trade reform legislation.

CBEMA is the trade association of producers of information processing, business and communications products, supplies and services. Its 38 member companies had combined sales of more than $135 billion in 1984. They employ more than 1.6 million people worldwide. In 1985, the U.S. computer and business equipment industry had exports of $16.270 billion and imports of $11.825 billion. The trade surplus was $4.445 billion.

I want to emphasize that last figure. Our industry is enjoying a multi-billion dollar trade surplus. And there are other signs that we are remarkably healthy. To mention just a few:

- The worldwide market share of many of our companies is increasing, in contrast to the experience of many American industries.
- Over the past fifteen years, total domestic shipments have grown at an average annual rate of 30%.
- Industry employment has increased annually at almost 10%.
- In certain sectors, our lead is significant. For instance, software revenues are nearly ten times larger than those of our

nearest competitors, France and Japan.

Today, we enjoy a lead in high technology but international competition is intense. U.S. consumers have ready access to products and services undreamed of just a decade ago. And our technology is helping other industries increase their productivity so that they may enjoy or regain a positive world trading position.

But these and many other successes depend on two vital trading factors:

- o Access to international markets so that we can sell our exports.
- o Access to international markets so that we can purchase the low-cost parts and components that make our products competitive.

The competitive health of our industry rests on an open international trading system:

- o Forty percent of U.S.-manufactured products in our industry are sold in international markets. They are competitive because we have been able to keep our prices low to a large degree by sourcing components and parts from the best supplier for quality and price. Measures that would restrict this sourcing would adversely affect our ability to sell U.S. exports competitively. Sales would slow; profits would fall.
- o Without the revenues from international product sales, the U.S. computer and business equipment industry would falter. Our

research and development, producing tomorrow's products, would have to be cut back. Substantial economies of scale and U.S. investment would drop and our U.S. employment would tumble.

Thus when we approach trade legislation, it is with two equally vital principles in mind:

- First, we must avoid protectionist measures. Adding tariffs or imposing quotas for the parts and components we import would mean that U.S. products that incorporate them would be more expensive and less competitive on the international market. And the possibility of starting retaliatory trade wars through protectionist measures is real.
- Second, we must open those international markets where our access is limited or where our products are unfairly closed out.

Both those principles are absolute mandates. CBEMA appeared on March 13 before this subcommittee to testify in support of H.R. 3439, the Telecommunications Trade Act of 1985 because we think H.R. 3439 is consistant with these principles.

We must preserve and enhance our ability to both sell and source products in the international marketplace. We cannot sacrifice one to achieve the other. But we recognize that the U.S. is in a serious trade deficit situation. Simply because our industry is enjoying a surplus does not mean that all U.S. industries are so fortunate. Indeed, when we look at the closely allied electronics industry, we

see that it is experiencing an $8.6 billion trade deficit. A significant portion of this deficit is attributable to an $11.1 billion deficit in consumer electronics.

It is true that the U.S. does not have--and probably cannot regain--an export lead in such items as televisions and VCRs. But we must not make decisions that would negatively affect the future growth and development of high technology in our country based on heavy domestic sales of imported consumer electronic products from boom boxes to Hi-Fi VCR's.

Industries that are suffering serious trade deficits often seem ready to sacrifice one principle for the other. There have been calls for protectionism. We applaud the efforts of many Members of Congress who have resisted those calls and who are looking instead for ways to improve U.S. international competitiveness.

That, I believe, is the goal of this Subcommittee: to solve the trade deficit problem without beginning protectionist trade wars. But I would submit to you that alterations to current trade laws are not the place to begin. They are not at the heart of the problem and they do not hold the key to the solution. Instead, our analysis is that the only way we can open more markets to U.S. products while at the same time avoiding the problems of protectionism is through high-level bilateral or multi-lateral talks focused on specific issues and conducted in an atmosphere in which the parties involved have a high commitment to success.

Why do I emphasize negotiations over alterations to current trade law? There are several reasons:

- Our analysis of international trade barriers to our products indicates that the problems are not susceptible to solution through alterations to current United States trade remedies law. But there is clear evidence that they can and do yield to negotiation.
- Our analysis of the history of trade remedy application is that they are often implemented well after the injury occurs. This seriously limits the beneficial effect of relief for the industry in question. And it is virtually always the case that remedies such as temporary import relief have not provided injured firms the means to return to competitiveness.
- Altering trade remedies can create new problems for industry.
- Competitiveness, the key to international market success, is far more affected by government policies such as regulation and tax structure than by trade law.

Let me discuss each of these areas in some detail.

Trade Barriers to International Sales of Computers and Business Equipment

- Many foreign governments have strong and often legislated government procurement directives that require buying only the

products of their own country. Thus while governments are major customers for our members' products in most regions of the world, access to their procurement activities by U.S. firms is limited. The GATT Procurement Code does not include many of our major trading partners, fails to cover many agencies (such as national PTTs), covers only purchases and not leases and contains a number of loopholes.

- Developing countries struggling under international debt have created barriers that restrict imports.
- A number of government-controlled communications systems (PTTs) impose restrictions such as permitting only PTT-supplied modems. Practices such as these impose non-technologically-based standards or restrict access to foreign databases.
- Companies in countries with deficient intellectual property protection systems are copying U.S. products without compensation and using the products they pirate to compete with U.S. firms.
- A number of newly industrialized countries are imposing "performance requirements" on companies that want to invest, including demands for the transfer or licensing of technology, surrendering management control, achieving certain export levels, performing local research and development and employing host country citizens. These factors combine to vastly reduce the value of investments -- to both the company and the country involved. Many times the investment is not made.
- Tariff rates remain an issue in several key markets. Europe imposes a 14% tariff on the import of semiconductors, Canada a 17% tariff on telecommunications equipment, and Taiwan a 40%

tariff on calculators. In addition, Mexico, Argentina, New Zealand and Korea levy extraordinarily high duty rates on our industry's products.

- For certain products, such as reprographic equipment, the U.S. in the aggregate has higher tariff rates on imported parts and components than on fully-assembled products. Thus it may be more economical for a company to import a fully assembled copier, for example, and sell it here than to import the components and assemble the final product in the U.S. This situation has an adverse impact on competitive pricing and the number of U.S. assembly jobs.

None of these problems is particularly susceptible to improvements in United States trade remedy law. But all are susceptible to solution through negotiation. It is only through high-level, focused negotiation that we can avoid the problems of protectionism while achieving our goal of open markets.

Limitations to the Effectiveness of Trade Remedies

Careful analysis of cases in which relief has been granted to certain industries under existing trade law leads to the following conclusions:

- Remedies are often implemented well after the injury occurs, limiting any beneficial effect of relief to the industry in question.

- In industries where the capacity to produce the product exists in many countries, the initial remedy is usually targeted at only a few countries or those using "unfair trade practices." But where demand exists in the U.S. for the product, production abroad is often assumed by countries that are not subject to the relief measures. This forces the U.S. industry to broaden its request for relief to cover many countries. The final step in the process occurs when downstream production picks up overseas and the imports of the products grow in the United States. (For instance, restrictions against sugar imports led to increased imports of candy bars.)
- Import relief does not usually provide injured firms the means to return to competitiveness. In part, this is because the laws are not designed to deal with competitiveness requirements and do not provide for any strict form of public accountability. Industries are generally free to do as they wish under the relief provided, often supporting current employment and pricing practices rather than investing in improved quality or productivity.

  In petitioning for relief, the industry in question should be required, as part of the petition, to demonstrate that the relief provided will permit it to return to competitiveness. This, in our view, is far preferable to involving the Government in developing adjustment plans. Government involvement in management prerogatives will only compound the causes of the problem.
- A strong dollar can offset the import-limiting effects of dumping and countervailing duties and can even lessen the protection

offered by import quotas.

- When U.S. demand is high, quotas can have the perverse effect of raising prices for the imported product, resulting in extra profit going out of the U.S. economy.

Problems in Altering Trade Remedies

In our desire to "get tough" with trading partners working under a different set of rules, we may instead impose new and unreasonable burdens on U.S. companies. For instance, we oppose changes in laws that would speed up ITC investigations in antidumping and countervailing duty cases. The purpose seems admirable--to frustrate unfair trading practices in a timely fashion.

But let's look at reality. Providing information and statistics to the ITC is already a major burden on our industry. Under current practice, CBEMA member companies are frequently asked to complete 50 to 80-page questionnaires in 10 to 15 days. It is difficult to see how we could report more rapidly to handle an acceleration in the timetables to meet reporting demands.

Related Policies that Affect U.S. Competitiveness

Competitiveness is at the root of the U.S. trade deficit situation. We sell less when we are less competitive than our trading partners. And trade remedies are not at the heart of the competitiveness issue. Government policies such as regulations, tax policies and

macroeconomic policies are far more important.

Most significant in increasing competitiveness are:

- o U.S. budgetary policies that reduce the deficit and thus increase funds available for investment.
- o Exchange rate policies aimed at reducing currency fluctuations.
- o A return to well-considered growth-oriented policies in the indebted developing countries.
- o Tax policies that encourage investments, especially in research and development and in capital equipment.

Possible Trade Law Revisions

We support general GATT negotiating authority that will permit maximum flexibility to U.S negotiators in achieving U.S. objectives. We would strongly urge the Government to seek GATT Government Procurement Code amendments to:

- o Tighten provisions of the GATT Procurement Code so that governments may not normally: a) use "emergency procedures" that allow them to invite single bids, and b) split contracts to avoid minimum thresholds.
- o Expand the number of government agencies that each signatory includes for Code coverage.
- o Include leasing as well as purchases of goods in the Code.

- Extend bidding times beyond the current 30 days.

We also support Government efforts to seek the inclusion on the GATT agenda of a) telecommunications services and b) appropriate recognition and enforcement of intellectual property rights. In addition, we urge the Government to seek negotiation of a GATT Investment Code to define what conditions may properly be imposed on foreign investors. Success in these areas would, we believe, do much to enhance the competitive health of our industry.

Our emphasis on GATT negotiations makes clear our strong belief that negotiation rather than change in our trade remedies law is far more important to improving the trade situation in our industry. But that does not mean that we oppose alterations in current law, so long as we acknowledge that these are secondary, not primary considerations. Specifically, we would support:

- 301 amendments requiring the USTR to include in its annual National Trade Estimates Report an estimate of the benefits to U.S. exports that would result from the elimination of identified barriers. Such data would assist in identifying areas with enough impact to be worth pursuing.
- 301 amendments requiring the USTR to report in a 15 to 18 month timeframe the status of efforts to negotiate the elimination of the offending practice would also be very useful. Such information would allow affected industries and Congress to evaluate next steps thoroughly.

- Removal of the "injury test" for domestic industries in Section 337 cases. Violation of intellectual property rights is simply wrong and invariably results in damage to U.S. interests.
- Amendments to the Foreign Corrupt Practices Act of 1977 to eliminate unnecessarily burdensome bookkeeping requirements.

There are, however, a number of trade remedy proposals we oppose:

- Reduction of the discretionary authority of the President in 301 cases. Such action could have serious adverse effects wherein the U.S. economy suffers more than the trading partner upon whom a mandated retaliation would be visited. Unfortunately, as many analysts have discerned, the implementation of Section 301 and other trade remedies often become something of a game in which we announce to our opponent, "Either you do what I want or I'll shoot myself in the foot."
- Expansion of grounds for 201 investigations or an amendment requiring the President to provide relief substantially equivalent to that recommended by the International Trade Commission. There are too many factors that must be taken into consideration to permit a reduction in the President's discretionary authority.
- 201 amendments that would require the President to impose provisional relief on the assumption that the ultimate remedy might not be timely enough to prevent injury to the affected U.S. industry. We are concerned that such actions could limit access to foreign-sourced components and parts resulting in greater harm

to the U.S. economy than any benefit temporary relief for the affected industry could provide.

- Automatic "graduation" of countries from the Generalized System of Preferences (GSP) Program. In the aggregate, duty-free treatment for GSP products is not significant for the U.S.; the program covers only 4% of imports. But GSP treatment is very significant for the beneficiary countries involved. Furthermore, graduation from the program could impact eligibility for loans from international financial institutions. The GSP program thus gives our government significant leverage to negotiate adequate and effective intellectual property protection and market access. These are matters of critical concern to our members.

Conclusions

No matter how refined the trade laws become, they will not provide much in the way of a significant boost toward a positive economic future. At best, they can serve as a backdrop to much-needed negotiations with individual trading partners on specific problems. An Administration initiated 301 investigation, for instance, has led to the current intellectual property talks with Korea, which appear to be on the verge of positive results. It is the negotiating authority provided by Congress that has brought us the positive results of last year's agreement with Japan and Canada to eliminate tariffs on computer parts. The MOSS talks with Japan have led to the removal of official barriers to trade in the telecommunications area.

Our negotiators need something to negotiate with. Flexible tools applied with analysis and discretion -- after substantive consultation with the affected industry -- are required. We look forward to working with your Committee to develop intelligent and imaginative solutions for particular problems.

But let us not fall into the trap that says that laws requiring retaliation are the only way to get our trading partners "in line." On the contrary, such laws are the buttons that, when pushed automatically, threaten to begin a series of international actions that could blow apart the trading system and result in a poorer economic climate for both the United States and the world.

Negotiation -- not mandated, automatic retaliation -- is the way to avoid devastating worldwide trade conflicts. Negotiation, not retaliation, is the way to build a better worldwide economy.

CBEMA

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Computer and Business Equipment Manufacturers Association 311 First Street, N.W., Suite 500, Washington, D.C. 20001 (202) 737-8888

ATTACHMENT

FOREIGN TRADE BARRIERS TO CBEMA COMPANY EXPORTS

The computer and business equipment industry is one of the most internationally competitive sectors of the U.S. economy. For 1985, total exports were $16.270 billion, which exceeded imports by $4.445 billion.

Despite this success, a number of trade barriers impede market access for computer and business equipment companies. To eliminate them, CBEMA supports carefully reasoned legislation and negotiations with trading partners. The following discussion summarizes the most significant barriers and recommends action to reduce or eliminate them.

I. Government Procurement Code

Issue

Many foreign governments have strong and often legislated preferences for buying their own products. Thus while governments are major customers for our members' products in most regions of the world, access to their procurement activities by U.S. firms is often limited.

Background

The General Agreement on Tariffs and Trade (GATT) has a Government Procurement Code under which signatories have agreed to conduct open, competitive bidding for contracts solicited by certain government agencies. Unfortunately, countries, such as Australia and New Zealand as well as many newly industrialized countries, are not signatories of this code.

Adding to this problem is the fact that many government agencies are not covered by the code. Thus many procurement intensive agencies, such as national PTTs (communications services), are not committed to open, competitive bidding for contracts.

In addition, the Code currently covers only purchases of goods, not leasing. Moreover, there are a number of loopholes which, the USTR has found, have been frequently employed by France, Italy and Japan to favor national companies. The 30 day procurement notice also acts as a barrier in that it is rarely sufficient time to develop a meaningful contract proposal.

U.S. Government procurement is relatively open to foreign suppliers, putting U.S. companies at a relative disadvantage; we compete on an equal footing for U.S. contracts but are at a serious disadvantage in competing for many foreign government contracts. Recently this has become an even more severe problem as Japanese companies have significantly increased their competition for U.S. government tenders.

Recommended CBEMA Actions

1. Support U.S. Government efforts to persuade more nations to sign the GATT Government Procurement Code.

2. Urge the U.S. Government to seek GATT Government Procurement Code amendments to:

   o tighten provisions so that governments may not normally: a) use "emergency procedures" that allow governments to invite single bids; and b) split contracts to avoid minimum thresholds;

   o expand the number of government agencies that each signatory includes for Code coverage;

   o include leasing as well as purchases of goods in the Code;

   o extend bidding times beyond 30 days.

3. Where there are grounds to believe that there is a pattern of GATT Procurement Code violations, recommend that the U.S. Government consider a 301 or GATT enforcement action as appropriate.

II. The Burden of Debt in Developing Countries

Issue

In an attempt to cope with heavy debt problems, some countries have created barriers to restrict imports. Such barriers work to deny access to these markets by CBEMA member companies.

Background

A significant and understandable link exists between the number and extent of trade barriers and a country's debt burden. Countries with heavy debt obligations have taken drastic steps to minimize dollar imports and maximize exports. The situation is at its worst in Latin America, but is also serious in Korea. Several other countries, such as Taiwan, also have debts that could become problems if growth rates decline.

The U.S. Government recently announced that austerity alone is not a viable solution to the debt crisis. The U.S. proposed that the World Bank, in combination with commercial banks, provide new resources to developing countries, allowing them to resume growth. This proposal may be controversial, but in many countries trade barriers will not be lowered until debt payment schedules are relaxed.

Recommended CBEMA Actions

1. Encourage the U.S. Government to pursue policies which support the restructuring of debt and enhance the flow of new capital

that are linked with policies requiring a corresponding reduction of trade barriers and sound development plans.

III. PTT Restrictions

Issue

Government-controlled communications systems (PTTs) often impose restrictions whose purpose seems largely protectionist. Thus, access to these markets is severely restricted.

Background

Opportunities exist to increase U.S. penetration in the international sphere. The privatization of NTT in Japan, for instance, has opened the Value Added Network (VAN) market substantially. Japan is moving toward an integrated services digital network and will be investing greatly to modernize its network.

In addition, the Europeans are beginning to question whether their fragmented markets and restrictive PTTs will enable them to be competitive. The Federal Republic of Germany, for instance, has recently announced its intention to permit customer provided modems.

At the same time, however, many barriers in this area persist. For instance:

- In Belgium, only PTT-provided modems are permitted.
- South Korea and Taiwan impose barriers on access to foreign data bases.
- A number of countries restrict customer premises equipment to PTT-defined standards and regulations that have no basis in technological need.

Representatives Matsui and Gregg have introduced telecommunications trade legislation that addresses this issue by directing the President to negotiate increased access and liberalization in Japan, Canada, Europe and possibly the newly industrialized countries.

Recommended CBEMA Actions

1. Support U.S. Government efforts to seek the inclusion of telecommunication services on the agenda of the next GATT round. Negotiations should focus on the liberalization of VAN services and international access to data bases.

2. Continue to support H.R. 3439, already endorsed by CBEMA. While the bill contains the threat of retaliation, it is flexible and allows for maneuvering.

IV. Intellectual Property

Issue

The protection of technological innovations embodied in the intellectual property of CBEMA member companies enhance their competitive edge. But in many countries it is common practice to use intellectual property without compensating the owner or demand concessions such as compulsory licenses or technology transfer. Brazil, Hong Kong, Korea, Singapore and Taiwan all have glaring deficiencies in protection of intellectual property which companies resident there are exploiting to compete with CBEMA firms.

Background

There are a number of ways to attack the problem of intellectual property protection. International conventions covering the protection of intellectual property rights are significant; unfortunately they lack universal membership and an enforcement mechanism. Direct government-to-government negotiations also constitute a viable vehicle for achieving positive results. However, several factors suggest that GATT may be the best vehicle for increased intellectual property protection:

- o Negotiations could occur without the need to open other international conventions, such as the Berne Convention, to amendment.
- o International recognition of intellectual property protection, especially software and semiconductor mask works as a "trade" issue would be helpful in focusing attention of governments on the issue.
- o GATT has a dispute settlement process which, if strengthened in the next GATT round, could be useful in resolving suspected infringements.
- o GATT, at the instigation of the U.S. and the E.C., has already begun to tackle a related issue, counterfeiting.

Recommended CBEMA Actions

1. Support U.S. Government efforts to include appropriate recognition and enforcement of intellectual property rights on the next GATT agenda.
2. Continue work with the U.S. Government and international organizations to identify threats to intellectual property protection and to remove them.
3. Continue opposition to any effort to alter copyright protection for software.

4. Encourage continued inclusion of intellectual property issues in bilateral discussions between the U.S. and trading partners, stressing the importance of copyright protection for software.

5. Continue to support the Administration's efforts under Section 301 to improve intellectual property protection in Korea and Brazil.

6. Encourage the President to use his authority to reduce or eliminate GSP benefits for countries without proper intellectual property protection and enforcement.

7. Support the expiration of the "manufacturing clause" to strengthen the U.S. negotiating hand. (Current law, which expires June 30, 1986, requires that all copyrighted, U.S.-authored, English-language "non-dramatic literary material" be printed in the U.S., with material of violators subject to a denial of entry order by U.S. Customs.)

V. Performance Requirements

Issue

"Performance requirements," particularly by newly industrialized countries that have debt problems, are a seriously burdensome barrier to trade.

Background

International investors who want to invest in various countries (for instance, to build a manufacturing plant) are increasingly subject to a number of "performance requirements" demanded by the government of the host country before it will permit the investment. For example, in order for U.S. companies to operate in their countries, some governments mandate that U.S. companies:

- o transfer or license technology,
- o surrender management control,
- o achieve certain levels of exports and local content,
- o perform local research and development,
- o employ host country citizens.

All of these requirements combine to impose burdensome costs and lower the efficiencies that CBEMA investor companies can contribute to the country's economy.

Recommended CBEMA Actions

1. Seek negotiation of a GATT Investment Code to define what conditions may properly be imposed on foreign investors.

2. Support continued U.S. Government efforts to negotiate the elimination or reduction of unfair or unreasonable practices by, among other things, linking easing NIC's debt problems to the reduction of "performance requirements."

VI. Tariff Rates in Foreign Countries

Issue

Tariff rates remain an issue in several key markets. Significant examples include:

- A 14% tariff on the import of semiconductors into the European Community.

- A 17% tariff on telecommunications equipment imposed by Canada.

- Extraordinary rates levied by Mexico, Argentina and Korea. These tariffs act in conjunction with non-tariff barriers that appear to be part of national strategies restricting access to these countries' markets.

- A 40% tariff on calculators imported into Taiwan.

- Heavy tariffs in New Zealand on computer parts and consumables. Power supplies, for instance, have a 40% tariff.

Recommended CBEMA Actions

1. Support the adoption of necessary legislative authority to permit appropriate multilateral and bilateral negotiations to reduce or eliminate tariffs, concentrating on problems in the industrialized and newly industrialized countries.

VII. Tariff Rates in the U.S.

Issue

For certain products, including reprographic equipment, the U.S. in the aggregate has higher tariff rates on imported parts and components than on fully-assembled products. Thus it may be more economical for a company to import a fully assembled copier, for example, and sell it here than to import the components and assemble the final product in the U.S. This situation has an adverse impact on competitive pricing, the number of U.S. assembly jobs, and the support for open trade policies.

Recommended CBEMA Action

1. Encourage the elimination of tariffs on parts and components for reprographics and other office equipment.

Mr. PEASE. Thank you, Mr. Henriques.

Has Mr. McDonell come through the door yet?

Mr. IVERSON. Apparently Mr. McDonell has not come through the door, but I am sure he will by the time I am finished.

Mr. PEASE. We can treat that as a tag team match, you can start and at that point he could step in.

STATEMENT OF HORACE G. McDONELL, JR., CHAIRMAN AND CHIEF EXECUTIVE OFFICER, PERKIN-ELMER CORP., AND CHAIRMAN, INTERNATIONAL STEERING COMMITTEE, AMERICAN ELECTRONICS ASSOCIATION, ACCOMPANIED BY J. RICHARD IVERSON, PRESIDENT, AMERICAN ELECTRONICS ASSOCIATION

Mr. IVERSON. Let me again say that I am J. Richard Iverson, president of the American Electronics Association substituting for Mr. McDonell who is chairman and chief executive officer of Perkin-Elmer, and who is also chairman of the American Electronics Association International Steering Committee.

As you know, the American Electronics Association is the largest trade association of the electronics industry, with over 2,700 high-technology electronics member firms. As you know, electronics has become an increasingly important segment of our economy; our industry is now one of the largest manufacturing employers in the country.

Our association represents manufacturers of computers, semiconductors, components, instruments, software, telecommunications equipment, and other industrial electronics products.

Electronics is a vital segment of the American economy, and it is the toolmaker for other industries, providing the equipment needed to strengthen U.S. productivity, and the global competitiveness of all sectors. A healthy electronics industry is key to U.S. leadership in the evolving information age.

Since 1978, the electronics industries have created over a million new jobs in the United States. It is now the largest manufacturing sector in the economy, employing 2.5 million Americans. We in the industry are very proud of this contribution. We believe that it reflects the traditional preeminence of our technological innovation as well as the strong competitive posture of our industry.

But there is evidence that this strong competitive position is eroding. The United States' worldwide trade in electronics products has fallen from a surplus of $7.4 billion in 1980 to a deficit of $8.6 billion in 1985. Imported electronics products increased their share of the U.S. market by 42 percent between 1980 and 1984, while the percentage of U.S. electronics sales derived from exports fell 19 percent.

These numbers indicate that we have clearly lost ground in international trade, an area which has historically accounted for some 15 percent of industries' revenues. Other visible evidence may be found by looking at the difficult straits of the semiconductor segment of our industry and the growing trade imbalance in telecommunications on which this committee held hearings just last week.

Clearly, the growing deficit in electronics trade is the result of a number of diverse factors.

Mr. IVERSON. Mr. McDonell has just arrived and I would like to offer him as a substitute to take over right here.

Mr. PEASE. Welcome, sir.

Mr. MCDONELL. Some of these factors, like the previously overvalued dollar and the relatively high cost of capital in the United States, are macro in scope and are best tackled by addressing the Federal budget deficit.

Other factors which undermine our ability to compete in the international marketplace include restricted access to some overseas markets, restrictive export controls here at home, and distortions caused by unfair trading practices such as dumping. We believe that the committee's actions in the area of trade law reform could be instrumental in helping to address problems of market access overseas, and unfair trading practices.

OVERVIEW OF AEA'S POSITION

Before I get into the question of specific trade legislative proposals, allow me to make three general points:

First, the AEA believes that the United States needs a long-term strategy for increasing the international competitive posture of industry. Trade policy is an integral part of this strategy which should also address macro economic factors such as the budget which influence the dollar and the cost of capital.

Second, in the area of trade, the AEA has as its primary goal to achieve a global trade environment that promotes, to the maximum extent possible, truly free, open and vigorous competition in international electronics markets.

Third, we believe that Congress has an important opportunity to shape the competitive environment for the electronics industries through omnibus trade legislation.

We are pleased to be able to provide at this juncture, some of our thoughts on how to go about this in a constructive manner.

BARRIERS AND DISTORTIONS IN ELECTRONICS TRADE

As many of you already know, there is a strategic side to trade in electronics. Other nations, perceiving that their ability to compete internationally is tied to the development of a sophisticated electronics sector, have sought to build a place for themselves in the world market. Both developed and developing countries have erected formal or informal barriers to discourage the sale of U.S. electronics products in their markets.

Several of our trading partners have done so in conjunction with policies which encourage the aggressive pursuit of the U.S. market including national support for the development of products to compete with U.S. offerings.

As a consequence, the U.S. electronics industries face a wide range of barriers and distortions which are either not adequately covered by international trade rules or violate the letter or spirit of international trade commitments. These include: lack of intellectual property protection in a number of countries; closed government procurement systems; restrictive standards and certification practices; and investment performance requirements.

AGGRESSIVE ENFORCEMENT OF U.S. RIGHTS

AEA believes that U.S. trade policy should be designed in the first instance to increase the access of U.S. companies to overseas markets. In particular, we support strengthening the tools available to U.S. trade negotiators to seek the reduction and elimination of those barriers and distortions outlined above whenever and wherever they appear.

In support of this objective, AEA advocates the effective utilization of access to the U.S. market as leverage, if necessary, where commitments obtained under specific agreements are not followed or where satisfactory commitments cannot be reached.

A good example of an aggressive U.S. effort to gain access to a foreign market was recently witnessed in the Market Oriented Sector Specific, MOSS, talks with the Japanese. In the MOSS case, U.S. negotiators worked closely with industry in developing clear and meaningful objectives. I cannot emphasize enough the value which we place on collaboration between industry and government in going about addressing market access questions.

They also, thanks to no small measure to pressure from Congress, had sufficient leverage to achieve the agreed upon market access goals.

THE NEED FOR LEGISLATION

We believe that omnibus trade legislation offers this committee an important opportunity to strengthen and enhance the tools available to U.S. trade officials to enforce U.S. commercial rights. In particular, we would advance four particular legislative areas consistent with the approach which I have outlined. Namely, authority for a new trade round; reform of section 301, strengthening intellectual property protection; and telecommunications market access.

Mr. Chairman, AEA has specific ideas under each of these headings which are outlined in a policy paper which I have attached to my testimony. Rather than reiterating these ideas, I would ask that the 4-page paper be included in the hearing record at the conclusion of my remarks.

Of course, this committee will be considering a variety of other policy areas for inclusion in omnibus legislation, as will the AEA. In the area of antidumping, for example, while we will not be recommending major revisions, we will be urging more vigorous enforcement of the current statute, particularly against chronic violators. We would very much appreciate the opportunity to work with staff as our process of developing positions on other provisions unfolds.

But for now, provisions in the above four areas represent a significant chunk of trade policy which we believe is consistent with our approach. Namely, strengthening and enhancing the tools available to our negotiators to reduce foreign barriers and distortions which undermine the competitive posture of our industries.

CONCLUSION

Mr. Chairman, along with reducing the Federal budget deficit, a constructive and aggressive trade policy is fundamental to reversing the erosion of our competitive position. Without a fair shake in foreign markets, we cannot hope to maintain our competitive edge. We would urge the Congress to seize the opportunity before it to set a constructive tone for our trade policy through legislation aimed at opening foreign markets.

Such legislation, if cast in terms of competitiveness, will help set the stage for a future in which America's industries move forward, not retrench; a future in which employment in the electronics industry will grow at an even faster pace than it has in the recent past.

Thank you for your kind attention.

[Attachments to the prepared statement follow:]

Statement of Mr. Horace G. McDonell, Jr.

on Behalf of

the American Electronics Association

Before the

House Ways and Means Subcommittee

on Trade

Summary

- Electronics is a vital segment of the American economy and it is the toolmaker for other industries to strengthen productivity and competitiveness. Since 1978, the electronics industries have created over a million new jobs in the U.S. Electronics is now the largest manufacturing sector in the economy, employing 2.5 million Americans.

- Trends in world-wide trade in electronics indicate, however, that the historically preeminent competitive position of the U.S. electronics industries is eroding. AEA believes that the growing deficit in electronics trade is due to macroeconomic factors which undermine global competitiveness as well as barriers to U.S. access abroad and distortions of unfair trading practices.

- AEA urges the Congress to adopt trade legislation which promotes to the maximum extent possible a truly free and open global trade environment characterized by vigorous competition in electronics.

- AEA supports strengthening the tools available to U.S. trade negotiators to seek the reduction and elimination of barriers and distortions to trade in electronics. In particular, AEA urges consideration of provisions in the following four areas:

  - Authority for a new trade round
  - Reform of section 301
  - Strengthening intellectual property protection
  - Telecommunications market access

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March 11, 1986

Enhancing U.S. Trade Policy Through Legislation

Introduction

Free and open trade is critical for a healthy U.S. electronics industry. However, while the U.S. market is fully open to our foreign competitors, U.S. electronics firms often face foreign trade barriers or distortions that block our exports, or provide artificial benefits to our foreign competitors in global markets.

The American Electronics Association believes that the current legislative effort underway in the area of trade policy should enhance the tools available to U.S. trade officials to effectively eleminate trade barriers and distortions. Any trade legislation should include the following provisions, among others:

-- Authority for a new trade round

-- Reform of Section 301

-- Strengthening intellectual property protection

-- Telecommunications market access

AEA is developing additional points, for example on issues such as export controls, that we believe should be covered in omnibus legislation or dealt with in U.S. trade policy generally.

NEW TRADE ROUND AUTHORITY

Background

While U.S. and international trade rules provide a number of mechanisms to obtain redress from foreign unfair practices, new varieties of unfair foreign trade practices not explicitly dealt with by existing rules are being utilized by a number of nations. Examples of unfair practices not adequately covered today include refusal to accept U.S. test data, restrictive regulatory mechanisms, coordinated government practices to favor domestic industry, private collusive cartels, preferential government procurement, and failure to adequately protect intellectual property.

The Administration's authority to enter into new trade agreements expires in 1988. Because a major negotiating round requires at

least five years, the negotiating stance of the U.S. will be undermined without renewed negotiating authority. Additionally, the process of obtaining such authority is critical to the successful conclusion of negotiations, because it provides an opportunity to develop a national consensus on U.S. objectives. AEA believes a new trade round should be an integral part of a broader approach to strengthening the world trade system and reversing the deterioration of the U.S. electronics industries' global competitive posture. Consequently, AEA recommends:

Recommendations

- That Congress grant authority to the Administration to enter into a major new round of trade negotiations. The fundamental objective of such negotiations should be to obtain the same real access to foreign markets that other countries enjoy in the U.S.; and

- that U.S. negotiators seek stronger rules for dealing with traditional barriers such as technical standards, government procurement of telecommunication and other electronics products, and safeguards; and address emerging problems, such as intellectual property protection, services, and technology transfer requirements in the context of investment. Additionally, the developing countries must be brought under international trade rules. High technology industries are particularly affected by trade barriers and distortions, since high technology producers ensure large research and development expenses and their products have a short product life cycle.

Reform of Section 301

Background

A new trade round requires a number of years, and may not cover all important issues. Accordingly, the U.S. must be prepared to use the leverage of continued access to the U.S. market where foreign practices are injuring U.S. industry. Use of leverage items such as duties or quotas to obtain removal of an unfair practice should only be imposed as a last resort, and in a way as to minimize injury to other U.S. industries or consumers.

The principal trade statute to accomplish this is Section 301. Under this statute, the President may, if necessary, retaliate against the offending country. The AEA believes that responses to foreign violations under this statute should be fast, flexible, and should defend the strategic interests of U.S. industry. Since September 1985, this Administration has taken the unprecedented step of self-initiating several 301 cases in order to eliminate the unfair trading practices of other nations. We believe that the Administration should retain current discretion in handling these and future 301 cases since the nature of the offending foreign practice and the circumstances vary widely. But

to ensure that the statute is administered henceforth as it has been since September 1985, the AEA would recommend the following reforms:

Recommendations

- That authority to initiate cases and to take retaliatory action be delegated from the President to the U.S. Trade Representative. The USTR reports directly to the President and would not take action that was opposed by the President. However, transferring authority to the USTR would strengthen the Trade Representative's hand in negotiating with other countries. This would also ensure that priorities of other agencies would not block progress at every step of the 301 proceding;

- that the scope of Section 301 be expanded to specifically include "targetting" and private collusive activities as actionable items, and that the U.S. also work within GATT to establish multilateral definitions and procedures to respond to targeting. In considering such cases, the full scope of foreign measures favoring domestic industry should be considered rather than each factor considered in isolation;

- that automatic retaliation be required only in those limited cases where there has been a positive GATT finding that the foreign practice is in fact in violation of international trade rules. Requiring retaliation in other cases could easily lead the United States into the situation where we ourselves would be vulnerable to foreign counter measures;

- that consultations with U.S. industry at appropriate steps of the 301 process including consideration of any potential U.S. retaliation be specified in the statute. This would allow industry input in a timely manner in any case that might have spill over affects from the injured industry to other industries;

- that penalties be made proportional to injury both incurred in the past and anticipated in the future. Penalty payments from duty assessments should flow to those industries, companies, and workers suffering actual injury as a result of the unfair trade practice, to the greatest extent possible.

Strengthening Intellectual Property Protection

Background

The failure of foreign countries, particularly many of the newly industrialized countries, to grant or enforce adequate intellectual property rights is undermining the competitiveness

of U.S. companies both at home and abroad. As markets for electronics and communications equipment have become more and more international, the scope of the problem has increased dramatically. Recently, the U.S. Department of Commerce estimated that the loss in U.S. sales due to theft of intellectual property is between $8-20 billion annually.

AEA supports efforts both domestically and internationally designed to strengthen the protection of intellectual property. Specifically, we would urge:

Recommendation

- That the proof of injury currently required under Section 337 of U.S. trade law be eliminated. This would put violations of patents and trademarks by foreigners on an even par with similar violations by domestic entities. Currently, when a company's intellectual property rights are violated by a foreign entity, it must seek redress under Section 337. This statute requires that injury be demonstrated before a remedy may be imposed. This requirement has resulted in companies being denied relief even after demonstrating that their intellectual property rights had been violated.

Telecommunications Market Access

Background

While U.S. telecommunications technology leads the world, our industry is seriously threatened by an ever increasing trade imbalance. This sectoral trade imbalance reflects a fundamental inequity in market access between the U.S. and virtually all of its trading partners. AEA believes that rectifying this imbalance requires greater access to foreign markets, not closing our own. We support providing U.S. trade officials with the appropriate tools to obtain greater access to foreign markets for U.S. telecommunications suppliers. In order to enhance the U.S. Government's determination and effectiveness in pursuing this objective, AEA would recommend the following specific provisions:

Recommendations

- authority for the Administration to undertake multilateral or bilateral discussions to achieve fair and equitable foreign market opportunities for U.S. telecommunications suppliers. Before undertaking such negotiations, the USTR should analyze all foreign acts, policies and practices that deny such opportunities and develop country by country negotiating objectives, priorities, and prospects for negotiating success;

- authority to take unilateral actions necessary to achieve negotiating objectives if no agreement is reached within two years.

Mr. PEASE. Thank you very much, Mr. McDonell. I must say that was a very impressive performance, you didn't miss a beat when you stepped right in.

Mr. Crane, would you like to inquire?

Mr. CRANE. Thank you, Mr. Chairman.

I want to thank the witnesses for their testimony.

Earlier today, we had testimony, I think it was from the chamber, expressing reservations about this delegation of authority to the U.S. Trade Representative that I think you embrace looking over your testimony. I indicated at that time that you needn't have that kind of reservation particularly because, after all, the USTR has to be accountable to the President, provided maybe that there is some ultimate veto authority resting upon certain criteria like national security or some national interests that the President may see from a different perspective than our Trade Representative.

I feel that the USTR's role, in part because of circumstances the last 6 months and the urgency of the problem, and the distinguished gentleman who is our USTR has changed, I think Clayton is going to carve out a niche for the U.S. Trade Representative in the future, now, God willing, we are not always going to need his aggressive USTR activity as we obviously need now.

But do you have any problems with putting some escape clause at the top? You are not talking about delegating total authority to the USTR, are you?

Mr. MCDONELL. No, I think our position is almost precisely as you describe, we think that the President should delegate to the USTR and that the ultimate authority should lie with the President to overrule as he saw fit.

The problem has been, I am sure as you know, in the past, getting the 301 complaints or the dumping complaints pursued to their conclusion, because other departments of the government tend to have their interests in mind and interfere with the process. We think it should be left to the President to override at his initiative if he wishes, but otherwise to strongly imply that Congress expects that the trade regulations will be enforced and that complaints will be pursued to their conclusion.

Mr. CRANE. We had testimony earlier when we were working on the Matsui-Gregg bill that the telecommunications industry, our domestic industry, found its greatest market abroad in developing countries, is that correct?

Mr. MCDONELL. I am sorry, I didn't catch that.

Mr. CRANE. The telecommunication industry found its greatest market abroad in developing countries, is that essentially correct?

Mr. MCDONELL. I believe that to be the case, although I do not claim specific expertise in the telecommunication sector.

Mr. CRANE. The reason I mentioned that—did you want to follow up?

Mr. HENRIQUES. I was going to say one of the reasons that is true is in many of the developed countries we are denied access to the market.

Mr. CRANE. With the PTT and——

Mr. HENRIQUES. That is right.

Mr. CRANE. The reason I mentioned that, is to highlight some information, from Banking Committee hearings, that came out in

yesterday's business section of the Post, talking about the drastic reductions having gone on for the past 3 or 4 years, of the market in the developing countries. The explanation they offered behind that, was some of the conditions placed upon them when they requested financial assistance to service loans to commercial banks and to some of our multilateral lending institutions, and that they—Paula Stern was one of the witnesses who testified—they really were very critical of the effort to take care of the banks at the expense of all other industries in the United States. I know that IMF conditions for lending to these Third World countries is that one, they drastically reduce their imports, two, they attempt greatly to accelerate their exports and there is even some evidence that the IMF has exerted some pressure for countries to debauch their currency so that they have a better relative trade advantage against a stronger U.S. dollar.

Have you had any direct experience with markets closing in some of these countries, or is it just lack of foreign exchange?

Mr. McDONELL. My personal experience is more the latter, I think, the absence of foreign exchange hard currency, although my company makes really two kinds of electronic products, one very expensive capital equipment for the semiconductor industry, those tend not to go to developing countries, and the others are analytical instruments which are used in underdeveloped countries, but they are low in unit cost, usually $10,000 or $20,000 amounts, and very often the underdeveloped countries are paid through AID funds.

So we don't run into the kind of situation where you are going to build a powerplant or put in telecommunications system, that is beyond my personal experience.

Mr. CRANE. There is one other point that I wanted to applaud in your testimony, and that is a better work relationship between government and business to carry out our export objectives. We heard earlier that because of cultural differences, it is difficult for us to get the kind of cooperation that exists in Japan. Having been over to visit in Japan with the American Productivity Center in 1981, I am not persuaded that this is true.

You know the Japanese asked us the question at the time, why do you people have an adversarial relationship between labor and management when a cooperative relationship produces the rising tide that John Kennedy said lifts all boats.

They asked us further, why do we have so adversarial a relationship between government and business, with Government taking an antagonistic attitude toward business, when over there they have harmonized those interests. I think it is in the interests of all of us to figure out how to harmonize our focuses, and frankly I think there is something to be learned from the Japanese experience. They, for example, engage in joint ventures where they will pull in heads of half a dozen electronic firms and will say we will put up the first seed money, now you decide which portion of the R&D efforts you want to take on. One of us asked who gets the patent? They looked at us with a bewildered expression like who cares, because after they have made the breakthrough they get very proprietary then with their own product line, but in sophisti-

cated fields like that, you cannot hang onto the patent rights more than 6 months anyway.

Frankly I think that our antitrust laws are really totally irrelevant to today's world markets. They were crafted in the United States over 100 years ago. They were designed for a Nation just barely breaking into the industrial revolution, and leaving an agriculture based economy. They really have no relevance to today's world.

Jim Scheuer has become a very eloquent, ardent spokesman for revising our antitrust laws. Do you share that same view?

Mr. McDONELL. Yes, sir, and even more broadly just change in attitudes between government and industry. In this competitive world we can ill afford the adversarial rolls. I don't think, for one, that this new trade legislation being contemplated has to be radical in a legislative sense. What it does is have to focus on the need for cooperation between government and industry, and on the fact that our government should be our partner, not our adversary.

Mr. CRANE. Or treating it with the negligence of an abused child who doesn't enjoy any supervision from a parent.

Mr. HENRIQUES. I would like to add, as I mentioned in my statement, and also in my summary, first we think the atmosphere is a lot better than it was 5 or 6 years ago in terms of cooperation. Most importantly, for example, in 301 actions, we think it would be wise for the USTR to consult with the industry before taking the action rather than after, and that way possible dead-ends could be avoided and strategies could be outlined that would make the 301 actions a lot more successful.

Mr. CRANE. I wholeheartedly agree with that, and frankly I think you will find our current trade representative I am sure would agree with you and be happy to sit down like that and consult in advance.

I thank you for your testimony.

Mr. McDONELL. May I make one statement before leaving. This is my second opportunity to testify before this committee. Last time was I think in 1981. On that occasion I arrived at 9 a.m. and got to testify at 4:45 p.m., and this time as you say, cut it a little close.

On average it works out OK.

Mr. CRANE. Actually you made it in time. You were ably represented until you get here.

Mr. McDONELL. Very good. Thank you.

Mr. JENKINS [presiding]. Mr. Frenzel.

Mr. FRENZEL. I want to thank both the gentlemen for their testimony; I thought they were both instructive.

Mr. McDonell, you have a small subsidiary in my district, I think in the hamlet Eden Prairie, MN.

Mr. McDONELL. It is not so small any more.

Mr. JENKINS. We appreciate it and we hope that it continues to get not so small.

Mr. McDONELL. That organization has more Ph.D.'s per square foot than any other I ever encountered.

Mr. JENKINS. They tried to tell me what they make, I said forget it, it is much too difficult for me to comprehend.

I would like to talk to you about your recommendation for changing 301. The first recommendation that you make in the addendum to which you referred is to shift the authority from the President to the Trade Representative. The administration is not thrilled about that prospect. I think all administrations try to protect the President's essential authority.

Your statement indicates that you think this would strengthen the hand of the Trade representative. Can you tell me how that would work in practice?

Mr. McDONELL. Our international steering committee labored over this particular point at some length, and I don't want you to think that we are all of the same political thought. This is a consensus recommendation and it did in fact windup the consensus to the whole committee.

The options, the problem has been as we have already mentioned that the reluctance of various administrations to enforce the trade agreements that are already on the books, including the 301 and dumping agreements and so forth because typically, State Department wants to say minimize the issue, Defense Department may have a point of view that has little to do with trade, Commerce Department I guess is usually aligned with USTR but it is kind of thrown on the table and debated from the start.

When the violations are very specific, I think infringement of economic agreement, we simply think if the Trade Representative has the unambiguous authority to pursue this investigation, and in the absence of a Presidential decision to make the decision with the President's authority, but we wanted to stop short of certain proposals that have been previously made, which makes the administration's responses mandatory—so we want to focus it on the one organization, the Special Trade Representative Office, who had been put in place for the explicit purpose of representing the U.S. interest on trade matters and everything else being equal, let him make the decisions.

Mr. FRENZEL. You feel that it is possible for the President to retain the authority that he needs to maintain through control of his appointees and yet at the same time, it will be more difficult for extraneous interests within the administration to prevent the actual beginnings of a 301 case.

Mr. McDONELL. It is a subtle point, it is simply where does the initiative lie. Someone wants to overrule the USTR, he can still go to the President and argue his case, but he won't be in the deliberations.

Mr. FRENZEL. Thank you. I think that helps us a little bit to understand what is going on.

Your third point on 301 is one that this committee has wrestled with, it requires I think the United States to think about what it is doing before it fires a cannon that is likely to be fired back. I think the administration would very strongly disagree with your position here, I think the committee has very strongly disagreed with it, and particularly yesterday on the telecommunications bill, refused to even consider the effects of retaliation or its cost to the United States.

I think it is an excellent suggestion, I didn't know how we will be able to integrate it into whatever we are doing, I only hope that we can because I think it is really important.

But I thank you for making the suggestion and I for one will try to incorporate it.

Mr. Henriques, you suggest that the worst of your problems in market access abroad are not going to be solved by the relief laws.

Mr. HENRIQUES. That is right.

Mr. FRENZEL. I think that is a wonderful statement which the committee probably would agree with, but that isn't the way the committee is going to react. Unfortunately, we are going to mess with those laws in a way that may ultimately be harmful, but the way I take your suggestion is that that among the most important aspects of the comprehensive trade laws is that they give the administration the authority to negotiate, in such a way that it can relieve some of your problems, among them the tariffs you face, of course. No relief mechanism can get around the high tariff, can it?

Mr. HENRIQUES. That is true, Mr. Frenzel. We have had a very successful experience just of late with the USTR and the arrangement that he has made both about Canada and with Japan to take tariffs on components and assemblies to zero in our industry.

I guess the point that we were really trying to make is that mandating an action, mandating a retaliation, seems to close the door to the possibility of negotiation, and we have had some very successful negotiation. So we would like to see the whole package available to whoever has the initiative, whether it is the President or the USTR. The preferred method would be negotiation, and that failing them some form of retaliation would be appropriate.

Mr. FRENZEL. Thank you very much.

That takes me back to one of Mr. McDonell's points also covered in the addendum to this testimony, which is with respect to telecommunications where you indicate you want to have a 2-year limit on negotiating before taking unilateral actions.

Does that mean that after 2 years we may take unilateral action or that after 2 years we must take unilateral action?

Mr. MCDONELL. I would think we would want to get things moving forward at the end of that time.

Mr. FRENZEL. The Trade Representative has suggested that sometimes these negotiations are very involved, particularly when you are dealing with the more sophisticated countries who make up the largest market for these kinds of pieces of equipment and that the administration is a little nervous under the bill that the committee is hearing which provides for 6 months of investigation, 12 months of negotiation, and then mandatory action.

The admininstration suggests that in fact they have to give 3 months notice if they would like to ask for an extension and so you may have only 9 months of negotiation. It suggests that this might close the door to a negotiated settlement that might be better for everyone if they are required to take action with the possibility when they think a reasonable conclusion is in sight to extend the negotiation.

In your recommendation, you have given an extra year over what the committee has given. Would you think it would be possible to extend that or do you think that is the outer limit? To

extend it in conditions where the administration thought it could make a better deal through further negotiation?

Mr. McDONELL. Well, when you think about time limits in negotiating legislation, in the electronic industry you have to remember that 2 years is the half life of most of our products. The game will be over if we don't somehow get the administrative practice to move faster.

I think most of us find deadlines and time limits to be not the most desirable form of expression, but we need some way of pursuing these matters to their conclusion.

Mr. FRENZEL. Well, I can understand that certainly you have been more generous than the committee was yesterday in the allocation of time.

Mr. McDONELL. I think it has been the attitude of our association that we don't want to interfere with negotiating practices, we want to encourage it.

Mr. FRENZEL. Well, the inclination, when perched on the shores of Lake Lamond in Geneva, is to have another glass of wine rather than to reach some conclusion. I guess that is perfectly understandable.

In line with Mr. Henriques' statement that much of what you are trying to get rid of is not going to be solved by these trade laws, are either of you bothered by U.S. export controls?

Mr. McDONELL. Yes.

Mr. FRENZEL. This is what is known as a very soft one down the middle.

Mr. McDONELL. I had the honor of serving some years ago on what was then known as the Bucey Committee, this goes back to I think 1976, and we were asked to make recommendations on what should be the U.S. policy with regard to export controls in that committee. A number of business leaders on it made a very succinct, clear-cut recommendation that everybody said they thought they were marvelous, that we ought to sell them the milk and not the cow, that the danger of technology transfer was not in the sale of the product, it didn't transfer the technology and the agreements address the sale of products, it is practically useless to try to control technology by controlling the sale of products, you cut off your nose to spite yourself.

Everybody said it was wonderful, I got a letter from the White House saying they were going to move forward on those policies and it is exactly the same today as it was 10 years ago. It is a self-defeating practice.

Mr. FRENZEL. It is worse because of the volume of trade and more complicated for companies smaller than yourself.

Mr. McDONELL. We have delivered, you hit a nerve when you asked me, sir, that question. We have delivered markets in the Communist bloc over to our competitors in Japan and France, England, all of whom are Cocom members by the way, and they now own those markets formerly ours and they own them because we defaulted, being unable to get export licenses.

Mr. FRENZEL. Thank you. I notice Mr. Henriques sitting bolted upright.

Mr. HENRIQUES. I would have to disagree a bit with my colleague here, I think it is worse than it was 10 years ago, not the same,

because the controllers, the export controllers have layered the system with three different methods now rather than just one method they had 10 years ago.

We have extensive commentary on that. I believe there are hearings sometime early in April specifically on the Export Administration Act, and export controls. Our industry has experienced the same thing: That markets in which we are considered unreliable suppliers because of the export control process flow naturally to the Japanese, the Germans, the Swedes, and other competitors. Our inability in the export control process to take account of current technology is crippling. And a lot of the markets we could serve and could maintain profitably without any damage to national security.

Mr. FRENZEL. Yes, I hope that you will be testifying before Chairman Bonker's committee. I pointed out earlier that in a comprehensive trade bill, most of what goes in there will be this committee's jurisdiction but the point that Mr. Crane made about antitrust, your recent points on export administration, Foreign Corrupt Practices Act, boycott legislation, all of the ways that we shoot ourselves in the foot, ought to be in that bill too, and I hope that both of you, I know both of you will be interested in promoting those.

I thank you very much for your testimony and to tell you, tell Mr. McDonell, I have never been on time for any of these, but I never picked up the thread as nicely as you did.

Mr. JENKINS. I thank the panel for your testimony. This concludes the hearing for this date.

We will continue on April 8 at 9:30 a.m. in room B-318 in the Rayburn House Office Building, at which time we expect the USTR, Ambassador Yuetter, will be the leadoff witness at that hearing.

The committee is adjourned.

[Whereupon, at 12:50 p.m., the subcommittee was adjourned, to reconvene at 9:30 a.m., Tuesday, April 8, 1986.]

TRADE REFORM LEGISLATION

TUESDAY, APRIL 8, 1986

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in room B-318, Rayburn House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman GIBBONS. Good morning, ladies and gentlemen.

This is a good day for trade. I know that the Japanese are seriously considering altering their own domestic economic policy, which I think will help Japan and will help us, also.

I know that the administration has come forward with a bill designed to put an end to pirating of intellectual property rights. That is fine, and I am glad that their bill and our bill that we are talking about today have got so much in common in that regard.

I am glad we have got our fine, vigorous Ambassador Yeutter here to start the conversation this morning.

I also want to announce that on April 21, 1986, we are going to start on the markup of this legislation. Hopefully, we will have the markup finished this month and ready to go to the floor by the middle of May. That is the chairman's timetable. I hope it is everyone else's timetable, too.

Let me say, we have to complete these hearings today. And, Ambassador Yeutter, you have a White House appointment at what time?

Ambassador YEUTTER. At 11, Mr. Chairman.

Chairman GIBBONS. What time do you need to leave here?

Ambassador YEUTTER. Ten minutes of would be fine.

Chairman GIBBONS. We are going to excuse you whether the committee is through with you by that time or not.

Let me say to you, Ambassador, publicly, as I have said privately, we want to work with you to develop a fine bipartisan, nonpartisan approach to America's trade policy. As I have said before, I want America to be a leader in trade policy and opening markets around the world and establishing good ground rules for what is really free, competitive trade.

As I have said so many times, I think subsidies are one of the greatest problems that we have because we tend to be throwing the national prestige as well as the National Treasury into the pursuit of trade when we do that. That has some certain very adverse psychological and economic effects, as well. I hope we can establish a stronger international trading system.

The thrust of the legislation I hope we can develop in this committee would be to promote that, to put America out in the leadership role, to encourage people around the world to follow these practices rather than to take a chance in violating the international agreements and our laws on subsidies.

I think the incentives have been the other way around in the past. There has been every incentive to go ahead and take a chance on subsidies or take a chance on dumping or other unfair trade practices. In case you get caught, the only penalty you have to pay is to then correct your conduct. That would never work in a civilized world like the United States. It won't work in the international environment. And I think it is time we begin to change that.

Mr. Ambassador, let me say I would ask other members of the panel, if they have got a statement they would like to make before we turn it over to you.

How about it, Mr. Crane?

Mr. Archer.

Mr. CRANE. Thank you, Mr. Chairman. I will be brief because we want to get into the exchange with our distinguished Ambassador.

I appreciated enormously, as I am sure all of our colleagues did, your participation in the seminar we had at Destin, FL. I was particularly pleased at the clear demonstration of a remarkable degree of bipartisan consensus on general principles. Some of the specifics I do have some problems with, as you do, too, and we can save that for when we get to Q and A after you have made your presentation.

The encouragement that our distinguished chairman sees on the Japanese front, apparently based on newspaper reports, is not necessarily reflected by progress with the European Community. I am thinking specifically of some of the retaliatory options available to us with regard to the European Community, Spain and Portugal specifically.

I welcome you to the committee again, and we look forward to working with you on this important bill.

Chairman GIBBONS. Mr. Archer.

Mr. ARCHER. Thank you, Mr. Chairman.

Mr. Ambassador, I also want to welcome you to our committee and to compliment you on the work that you have already done in your role as Trade Representative. I think it is highly encouraging to see the administration acting positively to open markets around the world so our products will have an opportunity to compete.

It does seem to me that it is extremely important that the American people understand that we have fair trade as well as free trade, and you have been a tremendous apostle in that regard.

So, I compliment you on that and would only say that I think there is a caveat on what the Japanese are doing. I am sure you believe that, too; that it is one thing for Mr. Nakasone to say he wants to accomplish something that will be beneficial, and it is another thing to get it through the bureaucracy and the legislative process in Japan.

And I don't think we can relax. I think we have got to continue to push in that regard. I know that you are doing that.

So, I thank you for being with us, and I look forward to your testimony.

Chairman GIBBONS. Do the other members of the panel have any statements?

Thank you.

Mr. Ambassador, you may proceed as you wish.

STATEMENT OF HON. CLAYTON YEUTTER, U.S. TRADE REPRESENTATIVE

Ambassador YEUTTER. Thank you very much, Mr. Chairman. It is nice to be back with you again.

I, too, very much enjoyed that productive weekend in Destin, FL. I should add parenthetically, Mr. Chairman, for the benefit of the American public, that the House Ways and Means Committee did work that weekend. That was not a junket. It really, truly was a session involving lots of hard work.

Chairman GIBBONS. We appreciate you saying that, but nobody is ever going to believe you.

Ambassador YEUTTER. They think we junketed together, don't they, Mr. Chairman?

Well, back to business. I have submitted for you, Mr. Chairman, a very lengthy piece of testimony which I obviously will not concentrate on.

Chairman GIBBONS. We will put that in the record. Proceed as you wish.

Ambassador YEUTTER. We prepared that testimony very comprehensively, Mr. Chairman, in an effort to try to be responsive to all of the issues that were raised in your draft bill. So, I will only try to select a number of issues to comment on verbally here, and then we will go to questions from you and your colleagues.

I will concentrate most of my comments on areas of the legislative proposal that cause us some difficulties within the administration, not because I want to come in here and be negative on everything, but because in the interest of time it is more worthwhile to concentrate on those elements rather than provide accolades on segments of the legislation that are helpful and beneficial.

Chairman GIBBONS. We agree.

Ambassador YEUTTER. It is important, of course, to keep all this in perspective. As you know very well, Mr. Chairman, the macroeconomic dimensions of this whole situation are tremendously important, and what we do in specific trade provisions here can be easily overwhelmed by what happens in fiscal and monetary policy in the United States and elsewhere.

I mention that only in passing. We can't change that in this environment here, but we can certainly try to influence it both from the congressional perspective and from the administration's perspective as time passes.

All that aside, at the moment I would like to concentrate on a few of the provisions. The first is section 301 where the subcommittee has developed some proposed amendments.

I would simply say to the subcommittee that section 301 is really an excellent provision of the law. It is regrettable perhaps that the Government did not choose to use section 301 a lot more aggressively, a lot sooner. But better late than never.

As Mr. Archer said, we are much more aggressive on unfair trade practices today. Section 301 is really our principal weapon in that regard. It is working very, very well.

One of its advantages, in my judgment, is its simplicity and its flexibility. I would hope, Mr. Chairman, that we don't end up with amendments to section 301 that will begin to tie our hands and take away some of that flexibility.

One of the reasons for that—and this comes from the experience of the last 8 or 9 months—is there are so many differences between the section 301 cases that they each have to be handled in a unique way. They vary from country to country, from product to product. They vary with the political situation in the country that is the adversary. They vary with the depth of the economic feeling, and political feeling on both sides.

There are so many variables involved in dealing with these section 301 cases that they require a lot of flexibility. So, I hope you will permit us to continue to have that flexibility as we operate.

The other general point I would make in this area is that we should recognize that there are other weapons in the arsenal, too. We have begun to use a few of those for the first time. As you know, Mr. Chairman, we announced a section 305 factual inquiry concerning the European Community's proposed Third Country Meat Directive here a few days ago. It is the first time we have ever used section 305 in this way. We intend to use it more frequently in the future, and may have, in fact, one additional announcement on that coming up in the next few days.

We used section 307 for the first time here a few days ago. This is the export performance requirement provision that Congress enacted in 1984. The specific case we are using it on now involves an investment in automobile manufacturing in Taiwan by Toyota Motor Corp., and the export performance requirements that are moving that product out of Taiwan.

So, that is an additional weapon that we are beginning to use. There are a number of others.

I would simply like to caution the Congress not to expect section 301 to do everything. Now that we are using it more aggressively, people out in industry in our domestic economy see that as an end-all or panacea for all ills. We shouldn't get ourselves in the position where we, in essence, write out of existence all the other trade laws and try to do everything under section 301.

There have been some suggestions that we deal with cases under 301 that should have been dealt with under the countervailing duty law or the antidumping law. We have to be careful we don't get carried away with euphoria over the use of section 301.

More specifically: clearly the administration would be concerned about transfer of executive authority from the President to me as the U.S. Trade Representative. That is a red herring; obviously, the U.S. Trade Representative and the President are going to think alike on this issue, or the U.S. Trade Representative is going to have a very short tenure.

I am not sure it helps to legislate in this area at all. It seems the present provisions are working satisfactorily. Beyond that, I am even more concerned about either mandatory self-initiation of 301 cases or mandatory retaliation in 301 cases.

Now, you have modified the original proposals in this area to a considerable respect, and what is in the draft bill today is infinitely superior to what was originally conceptualized in this area. But certainly we would like to have as much flexibility as possible on self-initiation and retaliation. Otherwise, we get ourselves as a Government into difficulty.

It is a question of priorities. We can't do everything, and we certainly can't do everything simultaneously.

I have seen some provisions that say we ought to self-initiate cases against everything that is in our National Trade Estimates report of trade practices that impede U.S. exports, which we provide to the Congress in October of each year. That is about a 3- or 4-inch-thick document. And if we self-initiated 301 cases in all of those, we would have to increase the size of USTR about 10 times.

As a practical matter, we just can't do that kind of thing. We have to prioritize. And it doesn't make sense to mandate actions that just are not practical.

There are provisions in here on export targeting. Those cause us some problems, too. I am as concerned about export targeting as anyone is because of the adverse impact it can have on the U.S. economy. But defining export targeting in such a way to deal with it, as to be able to deal with it effectively under section 301, is another matter entirely.

At the moment, my preference would be that we not try to legislate on targeting because I just don't think we are ready for that. I am concerned that if we put in language that isn't going to work effectively, we may catch ourselves in our own mousetrap; that some of the actions that we take here in the United States could be construed as targeting by other countries. If they pass mirror legislation, we may have everybody in the world charging everybody else with targeting violations. So, we have got to be very careful about what we do in the way of legislation and targeting.

As for deadlines on section 301: I have indicated in my testimony, Mr. Chairman, that we would not at all object to having something like a 24-month deadline for the dispute settlement elements of section 301—that is, those that need to go to the GATT dispute settlement system—because we think we need to get some discipline into that system. That is one of our objectives in the new GATT round, as you know. Having a timetable here that would force some GATT action would be helpful to us.

However, moving the present deadline from 12 months down to 9 months, as your bill would do, Mr. Chairman, seems to me too tight. It may not be too tight in many cases, but it will be too tight in some.

Section 301 is a very confrontational provision, as you know, and to try to work through some of these intricate, complex problems in a 9-month period of time is almost impossible. I think of the semi-conductor case as an example of that now, where we are dealing with a high-technology issue that is one of the most difficult we have ever confronted. If the legislation says 9 months or 12 months, we will meet the deadline. It does put a lot of pressure on, if the issue is one that is tremendously complex.

In terms of compensation authority, it would be helpful to have some compensation authority in section 301 if and when it would

be beneficial to an overall solution. I am not sure we have the right language on that provision, but we may have some additional recommendations in that regard. We do lack compensation authority under the law in a number of areas now, and having that would give us flexibility beyond what we have today.

I will not comment much on telecommunications, Mr. Chairman, because the subcommittee had a hearing on that recently. And Alan Woods, one of my deputies, testified at length. So, I think we ought to leave that for the question and answer period if anybody would want to expand further.

If that would be all right, I will move on to section 201, which certainly could be one controversial element of the legislation. As for the authority transfer issue, again from the President to myself, I commented on that earlier, so I will not dwell on that. The proposal has a couple of other aspects that are troublesome. Most of them relate to the whole question of adjustment assistance, how it is handled and whether one can go beyond present adjustment assistance kinds of activities into something that would be more meaningful.

All of us would like to do that, because my judgment is we are all frustrated by the adjustment assistance program which has not been very effective in past years, and everybody is looking for an improvement. As you well know, the Congress has decided to extend the present adjustment assistance program for another 6 years, but notwithstanding that action it seems imperative all of us take a look at that issue and see if we can't figure out a better way to run adjustment assistance over the next 6 years or on into the future.

We are going to continue to work on that within the administration. As the year advances, we may have some additional thoughts or recommendations for you. Suffice it to say today, some of the legislative language here is troublesome and would generate vigorous opposition within the administration.

I am thinking particularly about the industry adjustment plan proposals in the draft bill. Under this concept, representatives of business and industry and communities and firms would join together and develop an adjustment plan. If it were approved by the U.S. International Trade Commission, and if injury were determined by the Trade Commission, that plan would go into effect automatically, although we at USTR would have the authority to change it, but relief would go into effect automatically.

I am very concerned about this because it seems that is government by committee, and business by committee. A lot of the committee members are likely, or will likely be people who don't know very much about the industry or the firms in it, or what that industry ought to do to become internationally competitive. To me, it looks like a potential boondoggle of the first order, industrial planning of the worst sort, and also a planning process that is not subject to any kind of political control by the executive branch of government, which really should be held responsible for this activity.

In other words, all of the decisionmaking would be done by the U.S. International Trade Commission, an independent agency which is not responsible to the general public through the elective

process. It seems that is a major shortcoming of a provision of this nature and one we would find certainly distasteful.

Over and above that, of course we have philosophical objections, Mr. Chairman; we would have a government committee playing God, and government playing God, in this whole process. It seems that it is a lot better to let businesses and industries make their own decisions within whatever constraints are applied in the import relief process. In other words, it seems this is not a very good mousetrap and probably a worse mousetrap than the one we have today.

There are provisions here on handling perishable products under section 201. Congressman Thomas has had a particular interest in this problem because of his California constituency. And certainly we have conceptual agreement with that issue, though there is some disagreement as to how quickly relief can be granted.

But I will simply refer to my testimony on that score, and we can have further discussion at another time if we need it.

Provisional relief provisions bother me a great deal here, Mr. Chairman. They seem to me to be very nebulous and almost hypothetical. It is extremely difficult to expect the executive branch, or USTR in this particular case, to be able to anticipate the kind of injury that might occur to an industry and grant provisional relief without being unfair to other people around the world. That is a very heavy burden of responsibility which would be based on very little information or data.

These provisions are intended to prevent damage here in the United States, but can unnecessarily, unfairly and prematurely do great damage to our trading partners around the world. That kind of provision could easily run afoul of all our GATT obligations.

There are some antitrust provisions in here as an alternative to other relief and under section 201. Those can be helpful, and we would be supportive of those.

The matter of auctioning of quotas has also crept into these provisions, and this causes us a lot of difficulties. Mr. Chairman, this is an issue that deserves considerably more attention before we go very far in the legislative process.

We haven't had a chance to fully explore all the ramifications of auctioning quotas. What we see thus far gives us great concern, but we need to come back to be more specific with you as to just how much difficulty auctioning quotas would cause. It may, for example, require us to renegotiate all of our textile and apparel bilateral agreements.

If so, that would be a very chaotic situation indeed worldwide. It could cause us difficulty under a lot of our GATT obligations, and we need to examine that.

The other point I would make on auctioning quotas is that if Members of Congress are enticed by the revenue-generating possibilities of auctioning quotas, a much better way to generate revenue through import relief is to use tariffs. And, clearly, many of us believe that tariffs are the preferred relief in any case, because they are much less distortive of trade patterns and do avoid the problem of quotas, which has been one of giving the quota rents to those who are restricted.

Clearly, that situation ought to be rectified. But it is better to correct it through a tariff relief program than through auctioning of quotas, particularly if auctioning quotas is going to be a very big problem for us internationally.

An issue of great concern to you personally, Mr. Chairman, is the matter of resource subsidies. I am sorry to have to say to you that our position remains the same on that issue; that we would be opposed to an incorporation of the present resource subsidy language in this legislation, because it is just too broad. If we depart from the traditional specificity language, we clearly depart from our obligations under the existing GATT subsidy code, and we generate the possibility of retaliation in this area.

At the same time, we clearly agree with you that this is an issue that demands attention and correction, and we need to confront it. My judgment is that the best way to confront it is as what I would call a non-tariff measure issue or maybe even an export expansion issue under the new GATT trade round where we can try to get some international discipline in this area.

I am just not at all convinced, Mr. Chairman, that it fits the subsidy category very well. It may in some specific cases; but, to try to cover all the resource issues under the aegis of subsidy legislation or the GATT subsidy code seems to me to be counterproductive in all likelihood.

Section 337, as you know, relates to the intellectual property area, and we have had some conversation about the necessity to change both the industry and the injury test under that provision. I believe there is unanimity, Mr. Chairman, between the administration and the Congress on that. These are changes that are definitely necessary.

There are some other changes in that intellectual property legislation that would be very helpful, and it is apparent we ought to be able to reach agreement on language in that arena.

Just a comment on negotiating authority, Mr. Chairman, and then we can go to questions. We clearly are pleased that you have negotiating authority for a new GATT round in the legislation. We need that authority, of course, both with respect to tariffs and non-tariff measures.

I would personally prefer that the authority for non-tariff measures be permanent, although there is some rationale to having it be less than permanent in the sense of providing the motivation for bringing a GATT round to a conclusion. So I don't have strong feelings on the issue, and we can certainly live with either result in that category.

Your legislation would put a 1991 termination date on this exercise. That might be a little bit early depending on how quickly it moves along. But perhaps not. It seems there is some merit trying to make the GATT negotiation move along as rapidly as possible.

In terms of the objectives of the negotiation and the need for the administration to fulfill those objectives, as a prerequisite of receiving the negotiating authority we have some trouble with the language there in that it seems, Mr. Chairman, it doesn't give us quite enough maneuverability. It is difficult at this point to know with precision what our negotiating objectives ultimately will be.

As you know, the GATT preparatory committee is underway in Geneva now. It will make its recommendations on a negotiating agenda in July. When we have the GATT ministerial meeting in September, those arrangements will be finalized. But it takes 90 nations to tango in this process, and it is not our prerogative to impose our negotiating objectives on the rest of the world.

We certainly hope we will get most of them, if not all of them. But we may have to do some compromising on some of these before we are all through.

I would hate to get us in the position where we would compromise our own negotiating authority by virtue of eliminating one or two of those specific negotiating objectives from the final agenda.

In addition to that, there may be other objectives that will be added during the negotiating process that might be helpful to the United States.

So, I would just hope we would have a bit more flexibility on negotiating objectives and not any more tying of our hands than necessary as we move into the new GATT round.

Mr. Chairman, that is plenty of preliminary comments, in my judgment. So I am prepared to answer any questions you may have.

[The prepared statement follows:]

AMBASSADOR CLAYTON YEUTTER
TESTIMONY TO THE
SUBCOMMITTEE ON TRADE,
HOUSE COMMITTEE ON WAYS AND MEANS
APRIL 8, 1986

Mr. Chairman, I am pleased to have this opportunity to appear before you today to discuss proposals for trade legislation.

As I noted when I appeared before this Subcommittee in February, reduction of the U.S. merchandise trade deficit is an objective to which the Reagan Administration is firmly committed, and for which there is strong bipartisan support.

Throughout 1985, a great debate raged concerning the means to achieve that reduction. Last summer, many protectionist bills introduced in Congress advocated import limiting remedies which, as our history shows, would have grave negative consequences for U.S. exports, and for the standard of living of the American people. In sharp contrast to these negative remedies, President Reagan, in September of last year, instituted an aggressive "market opening" program for reducing the U.S. trade deficit.

The President's program sought to address immediately the high value of the U.S. dollar, a significant impediment to U.S. exports, which had, for several years, locked U.S. exporters out of many lucrative foreign markets. Action on the dollar has been supplemented through this program by a wide range of activities which aim at eliminating more discrete barriers to U.S. exports in specific foreign markets. Also, for the first time, the U.S. Government has used our trade laws to self-initiate actions aimed at removing trade barriers and limiting unfair trade practices.

In initiating this aggressive program, we shared with the Congress our expectation that the fruits of these efforts -- under the best of conditions -- would not be visible immediately. Yet within a reasonable period -- within six business quarters or eighteen months perhaps-- solid improvements would be apparent.

While we are only six months into this program, its impact is already visible. Since February 1985, the trade weighted value of our dollar has declined by 21% against the currencies of the major industrialized countries. Import prices are rising, and the February decline in our monthly trade deficit is encouraging. Particularly heartening was the growth in U.S. exports after months of stagnant performance. In addition, we have reinforced our improved trade competitiveness through actions which have opened markets for U.S. products in many foreign markets.

I am extremely gratified to see the positive response of our business community to the changes which have already occurred.

Just recently, John Welch, Jr. of General Electric expressed his support in a moving address about the coming of spring for American industry -- the burgeoning "renaissance" of industrial competitiveness which the Reagan Administration's trade action program is precipitating.

Cautious optimism is growing in our business community, Mr. Chairman, and within the Administration. We are beginning to see that the commitments contained in the President's program are valid and realistic, and that the support of all of the Members of Congress who have helped us to stand firm for a "market opening" remedy to our trade deficit situation was warranted.

Today, this Subcommittee is considering draft legislation which would alter the U.S. trade laws. Mr. Chairman, our trade laws are fundamentally sound. As I will explain in detail, we must resist proposals which may harm overall U.S. economic interests and which run counter to the objectives which our present statutes seek to achieve.

Let us agree to preserve the generation-old bipartisan consensus which holds that the key to advancing prosperity is expanding trade, not restraining it. And let us not endanger our future by allowing short-term political timetables to lead us into a self-destructive protectionist cycle or to alter our trade laws in ways we will live to regret.

I would like to move now to the particular areas that the Subcommittee will address in this hearing: our unfair trade practice laws, import relief and adjustment, national security, and trade negotiating authority for the new round of multilateral trade negotiations.

Section 301 of the Trade Act of 1974

Your bill and many others contain proposals to amend Section 301 of the Trade Act of 1974. I certainly agree that Section 301 is a key weapon in our trade arsenal. I appreciate having it. However, I do not think Section 301 needs to be fixed.

To the contrary, our recent use of Section 301 has demonstrated its effectiveness and adaptability. Just last week the White House announced the President's decision to act against new EC agricultural restrictions that could affect up to $1 billion in U.S. farm exports. In connection with Portugal's and Spain's entry into the EC, the EC is imposing import and consumption quotas in Portugal on oilseeds and oilseed products, and requiring Portugal to buy at least 15.5 percent of its grain from the EC. In Spain, a variable levy on corn and sorghum, currently equal to a tariff of over 100 percent, is replacing tariffs that are presently bound at 20%. Unless the EC promptly rescinds the Portuguese quotas and market reserve, under Section 301 we will

reciprocally impose quotas and raise tariffs on imports into the U.S. of EC products of similar value. In response to the Spanish variable levy on corn and sorghum, we will withdraw tariff bindings on U.S. imports of EC products of comparable value, and increase those tariffs unless, by July 1, the EC compensates us for the trade damage caused by the shift to variable levies.

In addition to the Section 301 actions against the EC, the White House announced our use, for the first time on our own motion, of Section 305 to examine the trade ramifications of the EC's proposed Third Country Meat Directive. Scheduled to become effective January 1, 1987, the directive would ban imports into the EC of meat not produced in conformity with strict new inspection requirements. We are not persuaded that the proposed requirements, which would be enormously expensive in many cases, are supported by valid health or sanitation concerns. Instead, the directive was adopted against the backdrop of massive beef surpluses within the Community.

Also on March 31 the White House announced our first investigation under Section 307 of the Trade and Tariff Act of 1984. This new provision authorizes the U.S. Trade Representative to take action in response to foreign governments' imposition of export performance requirements that adversely affect the economic interests of the United States. As directed by the President, we will investigate Taiwan's export performance requirements in the automotive sector. We understand that the Taiwan authorities recently approved an investment by Toyota Motor Corporation on the condition that a specified percentage of production would be exported. We are concerned about the adverse effects on our domestic automobile industry if imports increase, not because of their international competitiveness but because exports are mandated by government fiat.

Moreover, last fall, for the first time in our nation's history, we self-initiated four cases -- involving Brazil and its restrictive trade practices on informatics, Japan on manufactured tobacco products and Korea on insurance and intellectual property. These investigations are currently in progress; in each we will make recommendations to the President within a year of self-initiation.

Last fall, we also favorably settled two longstanding disputes. The EC agreed to eliminate production subsidies on canned peaches, and Japan agreed to pay compensation for its GATT-illegal quotas on leather and leather footwear. Because Japan increased these quotas only modestly, we retaliated against their exports of leather and leather footwear to the U.S. More significantly, we obtained Japanese tariff reductions for other goods that will make the Japanese market more accessible to many U.S. exports, including aluminum, paper, and photographic film.

This was a classic success story of using the leverage of Section 301 to open foreign markets to U.S. products-- a result far preferable to closing our domestic market to foreign competition.

Since last fall we have also seen the possibility of a Section 301 case produce significant market liberalization by our trading partners. To avoid a U.S. self-initiated 301 investigation, Taiwan significantly opened its market for our beer, wine and tobacco products. Likewise, Korea--already the object of two self-initiated Section 301 investigations--eased restrictions on motion picture distribution in response to a 301 filing by the Motion Picture Exporters Association.

In view of Section 301's vitality, we think amendments to it are unnecessary. The process is working well. It does not need tinkering, nor does it need clarification-- which instead might inadvertently narrow the scope of Section 301. In assessing proposed amendments to section 301, I hope the Subcommittee would base its consideration on a straightforward benchmark: Does the proposed change improve the ability of U.S. negotiators to increase foreign market access? Using that benchmark, the proposals which I have seen to date come up short.

Turning now to the specific proposed amendments, we oppose any transfer of authority-- including the authority to determine whether foreign government actions meet Section 301 criteria-- from the President to the U.S. Trade Representative. While I appreciate your confidence in my office, this additional authority is meaningless substantively and mischievous procedurally. First of all, I report to the President in any event. I will not, I assure you, act in a way the President would disapprove. Second, since all of our trading partners know that I work for the President, a transfer of authority to me and my successors would not succeed in "depoliticizing" an unfairness determination under Section 301. Third, the transfer could be counterproductive, if perceived by our trading partners to signal less interest at the highest level of our government in trade issues. Finally, the proposed transfer of authority would not, and should not, eliminate the opportunity for inter-agency deliberation of unfairness issues. In simpler cases where a foreign government's actions clearly meet Section 301's criteria, Presidential and inter-agency approval is not usually difficult to obtain. In harder cases, as well, agencies other than USTR have a legitimate role. They have a right to be heard, and their views are important. What is needed on trade is an expeditious, decisive policy making process and I believe we now have that. It will not be made any more expeditious or any more decisive by shifting the authority to make unfairness determinations from the President to the USTR.

We also oppose reducing the President's discretion under Section 301, whether through requirements for retaliation or through requirements for self-initiated action. We think this

would harm rather than further the interests of U.S. industries that seek elimination of foreign governments' unfair practices. Section 301 differs significantly from other trade remedies, such as antidumping and countervailing duties, which are explicitly provided for in multilateral agreements such as the GATT, have a limited scope, and affect only exports of goods into the U.S. market. Our trading partners see Section 301 as broad, unilateral action by the U.S. Government (except where it simply follows up on multilateral dispute settlement).

The 301 statute provides us with the leverage we need. A rigid, statutorily mandated approach will make foreign governments recalcitrant, more likely to stand on principle, and less likely to agree to negotiated settlements. Even more important, it will take away the flexibility we need to respond to the dynamic changes that often occur during a 301 investigation.

Moreover, mandatory retaliation will ensure a market closing response in at least some section 301 cases. That will not ensure any benefit to the industry that has sought increased access to a foreign market. But Section 301 is not an import relief law. Other laws serve that purpose. Its principal goal is to reduce or eliminate an unfair trade practice, thereby increasing our market access abroad. Mandatory retaliation could draw us into trade wars we never intended.

Consider, for example, the cases we self-initiated last fall. Would mandatory retaliation help U.S. insurance companies trying to write insurance in Korea? Or U.S. computer and other high technology enterprises trying to compete in Brazil? Or U.S. cigarette producers, who face no Japanese competition in our market, but sincerely want the opportunity to compete on an equitable basis in Japan?

We need a credible threat of retaliation in order to bring reluctant trading partners to the negotiating table. But we do not need a mandatory retaliation provision in order to establish that credibility. We have already established it through our recent actions in the citrus, canned fruit, and leather and leather footwear cases.

Other amendments to Section 301 under consideration by the Subcommittee would explicitly identify export targeting as a practice falling under that statute. They would also require retaliation in response to export targeting that nullifies or impairs concessions to the United States under any trade agreement. We have all been confronting this issue intensively for the last four years; and I am well aware of the Subcommittee's central role in the debate. Our pending Section 301 investigations on Japanese semiconductors and Brazil's informatics policies demonstrate our willingness to investigate allegations of unfair, trade-distorting effects from targeting strategies.

But can our trade laws deal adequately with the limitless combinations of government policies subsumed under the term "export targeting?" As you know, the Trade and Tariff Act of 1984 directed the Administration to investigate this question. We examined the scope and impact of foreign industrial targeting and the extent to which changes to our trade laws would be warranted. These reports were submitted to the Congress on July 15, 1985. Key conclusions were that:

-- Targeting is often unsuccessful, and draws upon more fundamental economic factors when it does succeed.
-- Targeting does not necessarily promote economic efficiency.
-- Current trade laws are generally adequate to address so-called "targeting" practices that affect U.S. industries. The few areas where existing laws do not cover targeting need thorough study before considering any changes.

The targeting studies of 1985 were sophisticated, serious analyses of this very complex question. We would welcome the opportunity to discuss both the analyses and the reports with your staff. I am satisfied with the conclusions of those reports and do not believe it would be wise to identify targeting as a separate basis for action. In my judgment, such legislation would create far more problems than it would solve.

We also oppose more specific and shorter deadlines for determinations and actions under Section 301. We do not think such proposals would benefit U.S. industry or our government. They would tie your trade negotiators' hands and preclude us from exercising our judgment and discretion as to how best to serve our trade policy objectives. If we believe a formal determination of unfairness will expedite decisive resolution of a case, we will make that determination. But experience has shown that in some cases the probability of reaching agreement will be higher if we refrain from a finding of unfairness.

An amendment to Section 301 to put a 24-month deadline on dispute settlement could be helpful. As a high priority in the new round of multilateral trade negotiations, we need to restore confidence in the GATT dispute settlement system, undermined badly through its conspicuous failures. One useful way to show our seriousness about the dispute settlement process would be to require the USTR to deem dispute settlement concluded within 24 months and then make recommendations to the President. We cannot allow multilateral dispute settlement to drag on as it has too often in the past.

Finally, we do not need any authority to terminate investigations; we have such authority already. If we conclude that a

case lacks merit under Section 301's criteria, we immediately cease action on the case, and formally terminate it at an appropriate time. For example, we terminated our investigation of steel wire rope from Korea when we concluded that the practices concerned were not actionable under Section 301. We also already have authority to modify actions taken under Section 301. The only form of compensation authority that could be useful is general authority to provide tariff compensation in appropriate cases when Congress increases duties, or when the Customs Service or a court reclassifies an item to a higher duty rate.

Trade in Telecommunications Products and Services

My Deputy, Ambassador Woods, has testified before the Trade Subcommittee about our concerns with telecommunications trade legislation. This is a complex area and I will not now amplify on those concerns or assess the revised provisions contained in your discussion draft. We all share the goal of negotiating more open markets for our highly competitive telecommunications industry. The issues are how best to achieve that objective, and whether and at what time any new legislation could be helpful. I have attached for the record a copy of Ambassador Woods' testimony.

Import Relief and Adjustment -- Section 201

Over the last five years, this Administration has demonstrated that we will provide import relief under section 201 in appropriate cases. Decisions on thirteen Section 201 cases have been made since this Administration took office. At this time, an additional three cases are awaiting International Trade Commission injury determinations (metal castings, apple juice, and steel forks and arms). Of the thirteen cases, a Presidential determination is pending on wood shakes and shingles. In seven cases, the ITC found no injury.

Of the remaining five cases where the Commission found injury and recommended import relief, the President granted such relief or alternative relief in three of the cases (specialty steel, carbon steel and heavyweight motorcycles). Only in two of the thirteen cases--copper and footwear--did the President reject import relief. The President's rationale for doing so was based strictly on the statutory criteria contained in Section 202(c) of the Trade Act relating to national economic interest. In the copper case, the President determined that import relief would have caused job losses in downstream copper fabricating industries far greater than jobs saved in copper mining. In the footwear case, the cost of relief to consumers would have been extremely high and the industry failed to show that relief would have improved its international competitiveness in any significant way.

This seems to me an impeccable record in administering Section

201, rather than one subject to criticism. Nonetheless, our large trade deficit has stimulated a myriad of legislative proposals to change Section 201, most of them blatantly protectionist.

Some proposals would remove the President's discretionary decisionmaking authority in Section 201 cases. For instance, one proposal would set up a two-track import relief process whereby if an adjustment track were pursued, relief would be automatic once the ITC finds injury and approves an adjustment plan. Other proposals would transfer decisionmaking authority from the President to the U.S. Trade Representative. The Administration opposes any change in or removal of Presidential discretion. First, I strongly oppose transferring decisionmaking authority to the USTR, for the reasons noted in my earlier discussion of Section 301. Second, removal of Presidential discretion would place an independent commission (the ITC) in the position of making decisions that have far-reaching foreign and domestic policy implications for the United States, without the benefit of review or modification by the executive branch of government. That is not sound public policy!

Other proposals focus on industry adjustment. We value industrial adjustment as a goal; in carrying out Presidential review of section 201 cases, the Administration has already focused considerable attention on the existing criterion in Section 202(c)(3) that requires the President to consider the probable effectiveness of import relief as a means to promote industry adjustment, and efforts within the industry to adjust to import competition. As you know, petitioners can already provide data on adjustment plans in their petitions, and we have taken the initiative in requesting the ITC to collect projected adjustment data as a part of any 201 investigation. Furthermore, in 201 cases we have conducted detailed discussions with individual firms on their adjustment intentions and on their ability to become internationally competitive. Where import relief has been granted, in most cases we have requested periodic reports from the ITC on actual adjustment efforts.

We do not believe that the proposals in the Subcommittee's discussion draft on industry adjustment under Section 201 are helpful. These proposals call for the establishment of a board with representatives from government, industry, labor, impacted communities and consumers, to draw up a consensus adjustment plan. They also call for an interagency import relief monitoring board. But industrial policy-type solutions to free-market problems have not worked in other countries--why should they work here? Why should government employees become immersed in private sector strategic planning? And why should government employees be interposed in traditional industry-labor relationships? These proposals would also transform the ITC from its traditional role as an independent commission into an industrial policy

making agency.

All these proposals seem to reflect the old "government knows best" philosophy, which is so much in disfavor with the American people. In a capitalistic society the marketplace does a much better job of allocating capital and human resources than does government, and we ought not forget it. We have 200 years of experience to support that thesis, yet there is still a great temptation to conclude that "this situation is different." Even in the 201 context, businesses should be free to make their own decisions.

Some have suggested that the Section 201 injury and causation standards should be changed to permit the Commission more readily to find injury during general recessionary periods. I do not understand this concern, since the Commission appears to discount the effects of recessionary cycles in arriving at its injury determinations. I can immediately recall two affirmative Commission findings---motorcycles and specialty steel--that were made during recessionary cycles. As a general principle, the Administration opposes any alteration in the existing injury or causation standards for section 201. And the change proposed here is simply unnecessary.

The Subcommittee's discussion draft contains a number of other proposals for changes in Section 201. The Administration has spent considerable time over the past few years studying many of these proposals. I will briefly summarize our reactions.

--Expedited consideration of petitions for trade adjustment assistance: Under the Subcommittee's discussion draft, an affirmative injury determination by the ITC would automatically trigger expedited consideration of petitions by workers and firms for certification of eligibility for trade adjustment assistance. Applicants would automatically be granted certification unless their petition were rejected within 60 days. The Administration opposes this proposal as unnecessary and undesirable. On many occasions, the Administration has expressed its opposition to the adjustment assistance program for firms, which is inappropriate from a policy standpoint and has not worked in practice. And in a large industry, we could receive a flood of petitions immediately after an affirmative 201 finding. The 60-day trigger in the discussion draft bill could result in tax monies being spent on benefits for completely unmeritorious claims, or claims based on erroneous or outdated information.

--Emergency relief for perishable agricultural products: In principle, the Administration supports timely import relief for such products. However, we are still studying the issue to determine how a provision can be crafted to make it both effective and GATT-consistent.

--Provisional relief upon finding of critical circumstances: The Subcommittee's discussion draft proposes that the USTR be required to provide provisional import relief if he finds that "critical circumstances" exist. We oppose this proposal. The draft proposes that the USTR's decision on this issue be based on the best information reasonably available at the time the petition is filed. Mr. Chairman, this provision could well force us to make an important decision, affecting both our domestic industry and our international obligations, on the basis of information that is simply inadequate to satisfy our GATT obligations or to render a fair decision. Escape clause relief as it is now is not a lengthy process--a maximum of eight months.

--Antitrust remedy as an alternative to import relief: The Administration's antitrust legislative package proposes the use of antitrust relief as an alternative to import relief. In essence, this proposal would provide a limited antitrust exemption, allowing firms in industries injured by imports to regain competitive strength by merging with or acquiring other firms, so as to obtain efficiencies and economies of scale. Antitrust relief to an industry would preclude any other import relief under section 201 for ten years.

--Auctioning import quota licenses: I understand that this idea has received considerable recent attention. Mr. Chairman, this proposal may be an economist's dream, but it could be a bureaucratic nightmare, and it would raise serious concerns regarding our international obligations. Section 1102 of the Trade Agreements Act of 1979 already gives us the authority to auction import licenses, but every time we have considered doing so we have concluded that the costs far outweigh the benefits.

The Subcommittee's discussion draft would require any import quota or orderly marketing agreement imposed under section 201 to be allocated among importers by public auction except in certain narrow circumstances. Proceeds of the auction would be deposited in a trust fund account for adjustment assistance to the domestic industry which is being granted the import relief.

Auctioning of quotas would raise serious questions regarding our GATT obligations. GATT Article VIII requires that import fees be limited to the approximate cost of services rendered, and prohibits imposition of fees as a taxation of imports for fiscal purposes or for protection to domestic products. The quota fees that importers would pay as a result of such an auction could conflict with Article VIII and could therefore be a GATT-illegal impairment of tariff bindings. Auctioning could also be incompatible with the GATT Licensing Code, and with bilateral agreements negotiated under the Multi-Fiber Arrangement.

Mandatory auctioning would make it much more difficult to negotiate orderly marketing agreements under section 201. A

licensing scheme could also increase the uncertainty faced by importers and users of imported inputs. Would domestic producers or others interested in raising or distorting the price of imports be able to buy up licenses, and either not use them or cover their costs by simply selling the licensed goods in the export market? There are still a lot of unresolved questions about how the abstract idea of an import quota auction would operate in practice. Finally, auctioning could require the establishment of a new administrative bureaucracy during a period of budgetary constraint.

-- Supplemental Adjustment Assistance Trust Fund: The discussion draft would require Section 201 duties and quota licensing proceeds to be deposited into industry-specific accounts which would finance adjustment assistance programs in industries benefiting from import relief under Section 201. As a matter of general policy, the Administration opposes such an "earmarking" of Federal revenues.

Relief from Resource Input Subsidies

This section of the Subcommittee's discussion draft would amend the countervailing duty law to make dual pricing of foreign government-owned or -regulated natural resources a subsidy. This amendment was first proposed in 1983. Since then it has been extensively debated. Each time the Administration has been asked for its views, it has opposed the provision. Mr. Chairman, we must continue to oppose it. Although some technical changes have been made (including provision of an injury test in all resource input subsidy cases), the sources of our fundamental concerns have not been addressed.

This provision violates the GATT. It goes beyond the internationally accepted definition of a subsidy and requires us to countervail benefits which are generally available within the foreign country. Violation of the universal consensus that subsidies are benefits provided to a specific industry or group of industries carries a high price. It gives our trading partners the legal right to retaliate against our exports. Our highly competitive export industries, then, will pay this price.

Adoption of this provision also will subject us to mirror legislation, which will further harm some of our strongest export industries. I know that the drafters have sought to define resource subsidies to provide a safe harbor for U.S. practices, but other countries would not be bound by our definition. Indeed, they would draft their own definitions to go after American exports to their markets.

Adherence to the specificity test serves U.S. interests well. All governments intervene in the marketplace, directly or indirectly affecting the competitiveness of certain industries.

However, unlike many other governments, we rarely channel benefits to specific industries. The specificity test provides a safe harbor for high-tech firms which may receive disproportionate benefits from government funding of universities, for agricultural interests which may receive disproportionate benefits from government-funded dams and irrigation projects, and the like. If we depart from the specificity principle and go after generally available benefits, we risk an open season on any sort of government intervention-- including our own-- in which American business would be the loser.

Finally, as the Administration has stated on numerous prior occasions, this provision sets out unworkable concepts such as "fair market value" and "market clearing price," which would be impossible to administer with any accuracy or predictability.

We are not insensitive to the sectoral problems facing natural resource-intensive industries. However, we must not rush precipitously into the wrong solution, particularly where, as here, I am not convinced that our existing trade remedies cannot address the problems.

Mr. Chairman, we understand and share your concern about the impact of imported petroleum products, petrochemicals and lumber on U.S. firms and workers. We continue our willingness to explore common solutions that are consistent with the GATT and long-term U.S. interests.

Section 337 of the Tariff Act of 1930

Section 337 of the Tariff Act of 1930 is a broad remedy against all forms of unfair trade practices involving intellectual property rights -- for example, copyrights, trademarks, patents, and semiconductor mask work rights. In many cases, Section 337 has been an effective tool for preventing foreign piracy. The advantages of Section 337 include its fast-track approach to intellectual property rights enforcement, and the remedies available, including an ITC exclusion order.

But some aspects of Section 337 create needless uncertainty for U.S. intellectual property owners seeking relief; and Section 337 as it stands does not always provide an adequate remedy for some important industries. Under the statute, the ITC may only grant relief if imports of the infringing product have the effect or tendency "to substantially injure or destroy an industry, efficiently and economically operated in the United States." Thus, the petitioner must meet both an "injury test" and an "industry test". The Administration supports elimination of both, insofar as Section 337 provides a remedy for intellectual property rights created by Federal laws. We see no reason to go easy on pirates!

Meeting the Section 337 injury test can be difficult and expensive. To prove injury the U.S. intellectual property owner must not only show a loss of customers, sales, jobs and market share, but must also establish a link between these losses and the unfair acts of the foreign company using his right without permission. This may be impossible when the U.S. plaintiff is still making any kind of profit. In effect a U.S. owner of intellectual property has to meet a stronger test in getting relief from the ITC against infringing imports that against domestic infringers.

I understand that some proponents of retaining the injury test in Section 337 have argued that its elimination would violate U.S. international obligations under the General Agreement on Tariffs and Trade. But nothing in the GATT requires that there be an injury test in Section 337 cases. Indeed, the 1982 report of the GATT Panel on United States Imports of Certain Spring Assemblies concluded that the injury test was from the Panel's perspective "irrelevant".

The Administration also supports elimination of the industry test provision of the current law, another source of needless uncertainty. The industry test introduces an unnecessary and burdensome contradiction into the process of protecting U.S. intellectual property rights. The intellectual property rights enforced through Section 337 enable their owners to prevent competitors from producing a product that is patented, trademarked or copyrighted; but an industry is made up of one or many companies making such products. And to find an industry in a patent case, for instance, the ITC must find that the activities described in the patent claim are actually carried out in the United States. The time, energy, and money of the patent owner, the respondent and the Commission are all expended to determine first whether a real industry exists, and second, whether it is "efficiently and economically operated." The industry test also prevents universities and research institutions from using the ITC for enforcing their patents, copyrights and trademarks because they are not in business.

I understand there are vigorous proponents of keeping the industry test in the law. Their principal argument is that without the test our proceedings could be used to enforce the rights of say a French company, with a valid patent in the United States, against infringing imports from a third country. This prospect does not disturb me. In fact, I hope that other countries will also develop laws to enable U.S. intellectual property owners to protect their foreign markets against third countries which tolerate piracy. Finally, our examination shows that elimination of the industry test would be fully consistent with the GATT and other international obligations of the United States.

There are two or three other minor points that I would like

to make concerning the Subcommittee's discussion draft. The draft refers only to "trademarks", without distinguishing between registered and unregistered trademarks. We think the bill's scope and intent would be clearer, and its application easier, if it were amended to refer to "registered trademarks." Similarly, it would be helpful to clarify explicitly in the bill that Section 337 covers mask works for semiconductors, which are now subject to a special form of intellectual property protection. Finally, the draft would require the ITC to decide on temporary exclusion orders within 90 days of initiation of Section 337 investigations. This timetable is inadequate for complicated cases; we would recommend allowing an additional 45 days in such cases.

National Security

Section 232 of the Trade Expansion Act of 1962 provides for import relief where the national security so requires. The Subcommittee's discussion draft would establish a time limit for Presidential determinations under section 232, and require a report to Congress on such determinations. The Administration opposes this proposal.

Section 232 is an extraordinary remedy. It should only be used under exceptional circumstances. But when imports constitute a threat to our national security, the President must have the authority to act in the best interests of the United States, at the time that the interests of the United States dictate.

The President must have the flexibility to control the timing of his actions under Section 232, and must have the discretion not to act when no action is needed. The additional reporting requirements proposed are not necessary. I know the importance of timely and expeditious decisionmaking, so please understand that my argument for preserving the President's freedom of action is not an excuse for unresponsiveness.

Trade Negotiating Objectives and Authority

The United States has worked intensively over the past eighteen months to build a strong, broadly-based international and domestic consensus for new multilateral trade negotiations. Existing trading rules are not working as effectively as we would like, and do not cover important elements of trade, such as services, investment and intellectual property that will grow in importance in the future. We need to launch new trade talks so that we can develop new disciplines and enhance existing rules to ensure fairer trade, increase access for exports, provide more effective dispute resolution, and strengthen the fabric of the international trading system.

The need for new trade negotiations has been a major theme of

international discussions for some time, but we have now moved beyond the academic discussion phase. In late November, the 90 members of the GATT agreed that new trade negotiations are needed and, more importantly, that the time has come to formally prepare for them. A Preparatory Committee has been established in the GATT to determine the objectives, subject matter, organizational details and participation in the new trade talks. The Committee is to complete its work by mid-July and make recommendations to ministers for action in September.

As preparatory talks proceed in Geneva, we are continuing to consult closely with our private sector advisory committees. Our consultations build on the report submitted to USTR last May by the Advisory Committee for Trade Negotiations, which summarizes the views of advisory committees representing industry, services, investment, defense, labor, and agriculture. The report also includes the views of the Business Roundtable, U.S. Council for International Business and the National Foreign Trade Council.

Since receiving this report, we have intensified our consultations with our 41 private sector advisory committees to facilitate their submission of detailed advice on specific negotiating goals, objectives, strategies and tactics. Some submissions have been received already, and we expect the others to be completed by June.

On the basis of the interim advice we have received, we are attempting to establish an ambitious, aggressive strategy to deal with the wide range of barriers to U.S. exports, establish a fairer basis for trade, and promote the competitiveness of American products and services.

The Committee has asked for my comments on the extension and expansion of negotiating authority for the new round. My comments are in two parts:

o First, with respect to non-tariff trade barriers, our current authority under Section 102 of the Trade Act of 1974 expires January 3, 1988. An extension of that provision under acceptable conditions would be useful so that we can negotiate reciprocal reductions on non-tariff barriers in the new round and beyond. I see no reason why this authority should not be made permanent. We will assuredly need it for decades to come.

o Second, we lack authority to negotiate reductions in tariff levels, either in the new round or in other negotiating fora. In contrast to previous trade negotiations, we do not expect tariffs to be a major element of the new round. Nevertheless, our private sector advisors have identified a number of important objectives to be achieved in the tariff area, such as reducing high foreign tariffs on paper, furniture, carpeting, and

a number of agricultural products, and binding the currently unbound tariffs of many developing and a few developed countries.

We intend to take up these matters as part of broader negotiations on market access, but we cannot expect our trading partners to discuss the reduction of their tariffs unless we are prepared to discuss ours. In my view, we could best achieve the objectives of our business community if we were to have tariff authority, both for the new round and for other negotiations such as bilateral or plurilateral free trade agreements.

The Kennedy Round of the sixties was the first multilateral trade negotiation to deal with non-tariff issues on a major scale. The Tokyo Round moved further still, to create an entirely new system of non-tariff barrier Codes. And now, as we move toward the new round, the negotiations will deal with a still wider and more complex set of trade problems, many of them never before dealt with in the GATT.

As we move toward the new round, we are committed to continuing the close consultative relationship with Congress and the private sector that was mandated by the Trade Act of 1974. The wider and more complex set of trade problems that we seek to address in this round necessitate continued intensive consultations throughout the preparatory and negotiating process. We welcome the ongoing involvement of both the private sector and Congress as we establish negotiating objectives, negotiate new rules to strengthen and improve the trading system, and reach agreements to open world trade.

Conclusion

In closing, Mr. Chairman and members of the Subcommittee, I share many of your frustrations and those of your constituents confronted with unfair actions by our trading partners. I know that those frustrations, combined with our trade deficit, inevitably give rise to the old refrain: "Don't just stand there, do something!"

With your help, we have been and are doing something. This Subcommittee and your colleagues in the House and the Senate have already given us the legal authority to take action to eliminate unfair trade practices abroad. This Administration has moved aggressively, last fall and again last week, to use our trade laws to counter such practices. Under President Reagan's leadership we will continue to do so.

We should remember, of course, that factors other than unfair trade practices play a much more significant role in the trade deficit. The strength of the dollar, high interest rates, and the high price of imported oil all have had a much greater impact on the competitiveness of U.S. industry, agriculture and services in world markets. And all three of those factors are now undergoing sharp changes to our benefit.

Mr. Chairman, I appreciated the opportunity to discuss many of these issues with you during the Subcommittee's trade seminar in Florida only a few weeks ago. That was a pleasant and productive weekend indeed. However, the discussion draft trade bill that is now on the table goes beyond what is desirable or necessary. The President's trade action program is beginning to show results. Let us not endanger those results through proposals that would run counter to the objectives our trade laws seek to serve and harm the overall economic interests of the United States.

STATEMENT OF ALAN WOODS, DEPUTY U.S. TRADE REPRESENTATIVE

Mr. Chairman and members of the Committee:

My name is Alan Woods and I am the Deputy United States Trade Representative. The Office of the United States Trade Representative appreciates the opportunity to appear before this Committee to discuss the important issue of international trade in telecommunications and, in particular, the provisions of H.R. 3439 and H.R. 3131 both entitled The Telecommunications Trade Act of 1985.

The Recent Decline in the U.S. Telecommunications Trade Position and the Reasons Behind Such Decline

The telecommunications industry is of central importance to the international competitiveness of the United States in high technology. By any number of measures we are the world's leader in the production, application, and use of telecommunications equipment and services. The relative U.S. performance in the international trade market for telecommunications equipment is, however, less impressive than that of other countries.

The U. has experienced more than a billion dollar shift in our trade position over the last three years. Our 1982 surplus of nearly $225 million shifted to a deficit of more than $1.8 billion in 1985. (U.S. exports were almost $1.1 billion while imports were almost $2.9 billion.)

These deteriorating trade figures have led both the Executive and Legislative Branches to review the issue of market access between ourselves and our major trading partners. We in the Executive Branch have concluded that our deteriorating trade performance is not due to deficient U.S. technology; on the contrary, we are unsurpassed in digital switch, microwave, lightwave, and satellite technology.

Rather, we believe that the reasons for the deteriorating trade balance in this sector can be traced to the following:

- The unilateral opening of the U.S. telecommunications market beginning with the 1968 Carterfone decision and continuing with the 1982 Consent Decree, has increased competition, both domestic and foreign, for equipment sales to private customers and regional telephone companies. While this increased competition has benefited U.S. consumers, it has had effects on international trade.

- Prior to deregulation, many U.S. companies were not as export-oriented as their foreign competitors and many others were not yet in existence--their creating having been stimulated by the opening up of the U.S. market. U.S. industry, though, is now placing much greater emphasis on exports.

- Foreign telecommunications markets have not been as open. In almost all important markets, the state monopoly or state-authorized monopoly is the overwhelmingly dominant purchaser of telecommunications equipment and the only service-provider. State postal telephone and telegraph companies (or PTT's), with the exception of NTT in Japan are not covered by the Government Procurement Code. It's not surprising that foreign governments often direct the purchase of telecommunications equipment to their domestic suppliers.

- Therefore, government purchases of network equipment are not covered under the GATT. Similarly, the Standards Code does not cover network equipment, because the Code does not extend to government purchasing specifications. The Standards Code does cover Government rules for attaching terminal equipment to telecommunications networks. At times, however, these rules have been fashioned to restrict market opportunities to an excessive degree. We recognize that in a world of communications systems which have evolved separately, different standards and equipment specifications among countries are going to exist. Many of these are dictated by individual countries' attempts to maintain the quality and integrity of their telecommunications networks, but some, we believe, are outright protec-

tionist. On the other hand, the U.S. standards-setting process provides ample opportunities for foreign interests to participate and the FCC equipment certification procedures are almost automatic.

- The high value of the dollar in past years has helped make foreign telecommunications equipment price competitive in the U.S. market and U.S. equipment relatively less competitive in some markets, especially in developing countries. With the value of the dollar now dropping, this should result in some improvement in our trade balance. But, where non-tariff barriers continue to exist, a cheaper dollar may not have much of a positive impact.

In reviewing the trade aspects of the deregulation of the U.S. telecommunications market and the divestiture of AT&T, what the Administration is concerned about is the future competitiveness and trade position of U.S. industry. Beginning in 1983, imports of sophisticated telecommunications equipment began entering the U.S. in large numbers. Telephone equipment retailers have begun purchasing large amounts of terminal equipment like PBX's and telephone sets. Also, and more importantly, the newly divested Bell operating companies, specialized common carriers have begun purchasing significant amounts of sophisticated foreign network equipment. For example, Siemens has announced the sale of a digital central office switch to Wisconsin Bell Telephone Company

and Bell South and NEC has begun selling the next generation of its NEAX61 digital central office switching this country.

As a result, we do not think it is an exaggeration to expect that imports of telecommunications equipment will continue to rise. On the other hand, we are also seeing an increase in foreign telecommunications investment in the United States which means that foreign involvement in the approximately $25 billion U.S. telecommunications equipment market goes well beyond the increasing flow of imports.

The Administration's Approach to Telecommunications Trade Issues

Obtaining open market access in foreign telecommunications markets--and not closing our market to imports or restricting investments--is a top priority for this Administration. In 1985 we engaged in intensive negotiations with the Government of Japan to remove all potential discriminatory aspects of the new Japanese telecommunications regulatory structure which went into effect April 1, 1985 with the privatization of NTT. To a large extent, we were successful in removing most of the structural and regulatory policies which have restricted our industry's ability to freely operate in Japan.

Clearly, Japan's telecommunications is not 100 percent open and clearly our trading position is nowhere near what it should be. Ultimately, success can only be measured by increased U.S. sales

and increased U.S. market share; a theme U.S. industry continues to stress and one with which we are in total agreement. With the large number of recently announced U.S.-Japan joint ventures, new business opportunities, and recently announced sales like communications satellites and central office digital switch systems, we are guardedly optimistic that our trade position in Japan will improve. However, I repeat: the Administration still has a "wait and see" attitude in assessing the overall payoff of our recent negotiations with Japan.

Japan has been by no means the only country where U.S. industry has faced obstacles to open competition in telecommunications. Our industry has informed us that it faces even more onerous market access problems in Europe. Most European markets are dominated by their individual PTTs, who prefer to purchase equipment manufactured within their borders. In addition, restrictive standards processes and testing and certification practices promote and protect domestic manufacturers at the expense of purchases from abroad. European PTT's also take a dim view of the U.S. approach of open competition in the enhanced services and as a result, U.S. firms have had little opportunity to offer these services in their markets.

As a result, beginning last year the Administration embarked on a strategy to engage European governments in telecommunications market access discussions. To date, we have engaged the Federal Republic of Germany in two rounds of market access discussions to

determine the degree of market opportunities for U.S. industry in Germany. We also plan to initiate similar discussions with Italy and other European governments in the very near future. We believe these discussions are an effective means to convey our concerns and expectations while, at the same time, encouraging positive movements toward liberalization in both the individual Member States and the European Community.

In Canada, we are aware that U.S. industry faces a number of barriers to access in that market and we are in the process of beginning discussions on market access with the Government of Canada. These discussions may or may not be folded into the framework of the expected future Free Trade Area discussions.

As this process evolves, the Administration recognizes that in the context of trade negotiations the United States needs to be able to offer incentives to other countries to liberalize their telecommunications markets. Ours is already a virtually open market--the trade figures and our open regulatory structure attest to this fact.

The approach we adopt for securing increased foreign access for telecommunications industry must take into account two important factors. First, we must respect our international trading obligations and thereby avoid taking actions that could lead to foreign retaliation adversely affecting U.S. exports or the subsidiaries of U.S. firms within or outside the telecommunications

sector. Second, we must ensure that the negotiating leverage of the President is sufficiently flexible to address a diverse array of market access problems. For example, our problems in Japan are different from those in Europe, which are in turn different from those we face in Canada. One narrowly drawn approach, if applied to all regions of the world, would not be likely to produce the desired results given the varying levels of trade, investment and regulatory structures among our trading partners. In addition to issues of trade investment, we must consider the differing domestic telecommunications policies being pursued by our trading partners.

In sum, the President must have the flexibility to respond to a variety of market access problems that differ from region to region. Further, it is critical that government and industry work together to define our negotiating objectives with regard to specific situations and in those countries where the largest problems exist for the U.S. telecommunications industry. Given the rapidly changing nature of this industry, these objectives will change over time and the criteria for success will vary substantially from country to country because the numerous factors that must be considered also vary country to country.

Administration Views on Telecommunications Trade Legislation and H.R. 3131 and 3439.

The Administration supports the basic objective of H.R. 3131 and

H.R. 3439 -- to open to foreign markets for telecommunications products and services. Moreover, the bills recognize that negotiations will be necessary to achieve that objective, a view the Administration shares.

However, we believe that both bills contain requirements that would tend to undermine or even defeat the market-opening objectives as stated in the bills. Undoubtedly, the feature of greatest concern to the Administration in any of these sectoral telecommunications bills, though, is that H.R. 3439 and H.R. 3131 would <u>require</u> the President to take retaliatory action on a fixed schedule, regardless of other intervening factors. We do not dismiss the value of retaliatory power as a negotiating tool but the President must have discretion to use that tool in a way that will help achieve the objective of obtaining increased market access. Legislatively-mandated retaliation, with fixed standards and timetables is far more likely to result in a cycle of restrictions and counter-restrictions, to the harm of all, than to achieve trade liberalization. The Administration welcomes enhanced authority for the President to retaliate and negotiate, but we cannot accept mandatory retaliation provisions.

<u>H.R. 3131</u>

Let me turn first to H.R. 3131, the Wirth/Florio bill. As a general matter this bill differs from more traditional trade legislation in that it urges the President to negotiate foreign

access but provides as the only tool to do so mandatory retaliation in the absence of foreign concessions within a stated period of time. In short this bill gives no carrots, while requiring use of sticks. Without the ability to offer incentives in the context of negotiations, we will surely find ourselves in a cycle of retaliation and counter-retaliation that will harm our telecommunications industry as well as other industries. The bill also raises concern because it endorses a sectoral reciprocity approach with each important country. While "substantially equivalent market access" appears attractive in an area of high U.S. competitiveness like telecommunications, it is seldom possible to construct balanced agreements confined to one sector. A sectoral reciprocity requirement is far more likely to result in a reciprocal increase of restrictions to the level of the weaker country than to liberalize trade.

H.R. 3439

H.R. 3439 allows the President greater initial flexibility to determine the objectives and priorities of neogitations with each country. However, once those objectives are set after six months, H.R. 3439 does not provide the necessary room for the President to adjust those objectives in the course of subsequent negotiations. While we should have clearly-defined objectives going into any negotiations, it is poor and ineffective negotiating strategy to be locked into those initial objectives. We will have shown our hand to our negotiating partners, without the

ability to adjust to changed circumstances and new possibilities. We don't want to aim too low entering into negotiations, but we need the flexibility to be able to achieve good agreements, even if the agreements may differ from or even fall short of our initial objectives.

The arbitrary deadlines provided in the bill are also likely to prove counterproductive. It is unrealistic to expect that negotiations with every country will bear fruit on the two-year schedule dictated by this bill. A requirement to retaliate on a fixed schedule is an ultimatum, far more likely to produce counter-retaliation than trade liberalization.

Finally, while H.R. 3439 does provide the President with authority to compensate countries against which we retaliate, compensation outside the telecommunications sector will almost certainly be required. Consequently, the question should be asked: what other sectors of the U.S. economy should serve as compensation to foreign countries for U.S. actions which restrict their access to our telecommunications market? Further, any retaliation confined to the telecommunications sector may prove detrimental to the long run competitiveness of the U.S. telecommunications industry, to U.S. consumers, and to other industries who must pay the price for such actions but who cannot receive any benefits under this bill. More comprehensive negotiating authority would enable negotiators to bring a fairer distribution of benefits to the U.S. economy.

H.R. 3439 does not give adequate flexibility in this regard, since it forces retaliation to the extent an agreement falls short of the initially-stated objectives. Few, if any countries are likely to negotiate on such a basis, even those who might otherwise be willing to negotiate some beneficial liberalization. The result would be a requirement to retaliate by closing our market, an action that would hurt consumers and breed counter-retaliation against U.S. exports in telecommunication and other sectors.

Conclusion

I wish to thank the Subcommittee for the opportunity to testify on an issue this Administration considers to be one of fundamental importance to our future trade policy. We are intensifying efforts with our trading partners in bilateral and multilateral negotiations to get them to improve market access opportunities in telecommunications equipment and services for U.S. industry. We will continue to vigorously pursue U.S. trade interests and rights under U.S. laws and international agreements and will ensure that other countries live up to their trade agreements with the United States. We will also continue to take those actions currently available to us to achieve more open foreign markets and to defend ourselves against unfair foreign trade practices in telecommunications trade.

Mr. Chairman, I again wish to thank you for providing me the opportunity to testify here today. We will be pleased to continue our consultations with this Committee as our telecommunications discussions with trading partners progress. We want to work with Congress and U.S. industry to craft the best strategy for achieving our objective of opening foreign telecommunications markets. Thus, the Office of the United States Trade Representative and the Administration look forward to working with this Committee on dealing with the problems which H.R. 3439 and 3131 address.

Chairman GIBBONS. Mr. Ambassador, I visualize that in September this year on one sunshiny day in the rose garden we will gather together. You will be there and Mr. Kirkland will be there and the leaders of American industry will be there, and a few members from the Ways and Means Committee, a few members of the Finance Committee and we are going to sign a bill and the President is going to say this is the finest piece of legislation that has been across his desk in this area in 10 years or since he has been President.

This means we are all going to have to give a little to do that, and so it is in that spirit I start talking with you about this because I want to see negotiating authority, I want to see this thing get started.

But we are all going to have to give a little. I say that up front because I don't want anybody to think that I am going into this thing so bigoted that I don't believe that every line that has been put on paper is sacrosanct and can't be changed.

I am willing to live and learn and forgive and to move ahead. But we are going to have to move.

This bill is going to contain more than just a trade section. It is going to contain a monetary section.

It is going to contain, I hope, some provisions getting rid of some of the unpalatable parts of the Export Administration laws, particularly those dealing with our own people working overseas. Those things are all in the works now.

We are moving ahead and the Speaker has said and others have said let's get a trade bill out this year. So that is the objective of this chairman. Now, I agree with you what we say about section 301 in removing Executive authority is mainly talk because I realize that no one can sit in your chair and have the President as his chief client and not get along with his chief client.

His chief client is going to call the shots. You are just the adviser like a good lawyer would be to a chief client. So I am willing to make whatever changes in that section need to be done.

I am glad you are using the other provisions of the law. I think, though, you would be making a mistake if you don't think the Congress wants some mandatory provisions in here. Frankly, we see the mandatory provisions as a way of taking the President off the spot.

If the mandatory provisions require action, then the President finds himself bound by law and in a better bargaining position than he would be if he has to go to his fellow chief executives around the world and say, hey, I would like to negotiate on this.

If he goes and says, look, we are going to have to move in these areas, the Congress has said we have got to move in these areas, then I think that you are in a better bargaining position.

Let me hear you respond to that.

Ambassador YEUTTER. OK. Mr. Chairman, there is no question that mandatory kinds of provisions, whether they apply to self-initiation or retaliation or other aspects of the law, provide leverage. That is clearly the upside, as you point out.

Chairman GIBBONS. A good point.

Ambassador YEUTTER. The down side of mandatory provisions, of course, is their rigidity and inflexibility. I can think of some exam-

ples within our present day usage of section 301 that illustrate that.

Let me just provide one that points out the need to have some wiggle room for the President of the United States. We had reached a decision to retaliate against Japan in the leather and leather footwear 301 case, on December 2 because of the lack of responsiveness by the Government of Japan by the deadline we had set, which was December 1, as you will recall.

As a courtesy to the Government of Japan, we held off that announcement for about 2 or 3 weeks because of the continuation of their Diet session and because trade legislation beneficial to us was pending in the Diet.

If we had no wiggle room there that legislation might not have passed. In addition to which, the Government of Japan then came in and made a counter-proposal after the retaliation decision had been communicated to them, which was a very helpful market opening result for us. Had we mandatorily retaliated on December 2 we perhaps would never have received that counter-proposal that worked out to be clearly advantageous to the United States.

That is the advantage of having a bit of wiggle room and flexibility.

Chairman GIBBONS. Well, I can understand that, but it also sometimes seems to me wiggle room and flexibility puts you in a position where you can be pressured in other areas that are not directly related to trade, but are in the interest of the United States.

I hesitate to call those blackmail because that is a dirty word, but I think in the past America has been blackmailed over some of the provisions because our trade partners have said, well, you know, you have got certain other interests and trade has really taken a secondary position.

I think the tolerance in American business and industries has run out. It certainly has run out in the political community if I am any judge of what goes on in Congress here. That worries me.

Now, let's talk about targeting and talk about natural resources.

On targeting last year everybody said, oh, no, let's not do that under the countervailing duty law. It would be better if we did it under the section 301 process. Now, we come back and put it under the section 301 process and everybody says, let's don't do that because we might actually scare somebody if we did that.

I am worried about targeting. Targeting is a deliberate effort to take over a part of the market that involves the use of Government resources. But we have defined it so narrowly it must first of all injure and it must be a combination of coordination action.

Now, it seems to me this involving or encouraging the involvement of Government and Government's prestige and Government's treasury in the taking over of a market is going to lead us to a war that we in the United States can win but we wish we had never gotten involved in because we are going to come out with such a distorted economy.

That is the reason for putting targeting down as one of those "no-no" practices. Now, you say, oh, we target. Mr. Ambassador, I don't know what we target. Yes, we subsidize but we don't do it with the purpose of taking over anybody's market.

If we do, we should not be doing it and I am not sure any subsidies we give are injurious to anyone else. Can you give me some illustrations of targeting that we have done that has been injurious to anyone else?

Ambassador YEUTTER. Well, it depends, Mr. Chairman, on how we define targeting and how we define injury, but trying to put myself in the shoes of a trading partner, I suppose if we pass targeting legislation, I would say, gee, it looks to me as if you Americans have targeted agriculture. You are putting billions of dollars into agricultural programs of various kinds.

Chairman GIBBONS. I thought it was the administration's policy to quit that targeting. I thought we are going to save Russia now.

Ambassador YEUTTER. It is the administration's policy to move toward a more free and open agricultural policy.

Chairman GIBBONS. I am reinforcing the movement that you have started.

Ambassador YEUTTER. Nonetheless, we in the United States are still spending billions of dollars on agriculture.

Chairman GIBBONS. Are we injuring anybody by that?

Ambassador YEUTTER. Well, the question, that gets to the second part of the question, which is how does one define injury. Clearly we capture a very major segment of the world market, have captured a major share of the world market in agriculture.

Not as big a share as we would like to capture and obviously as an agriculturalist I would like to see us get a lot more. As I said, I am putting myself in the shoes of our trading partners in making the argument they would likely make in the GATT.

I suspect we might see some of that coming through in the industrial sector to some degree, too, through our NASA research programs.

Chairman GIBBONS. Have we injured anybody with our NASA research program? I am anxious to get the advantage of what subsidy we have provided there.

Those things are pretty much available to anybody. We publish books on them. The libraries are full of stuff. We can't wait to give away our developments there.

Ambassador YEUTTER. Sure. Our trading partners would argue, however, Mr. Chairman, that if those Government benefits provided us a larger share of the world market than would otherwise have been attained by the United States in the absence of such programs that they have been injured thereby.

That is an argument we often make against those trading partners so there is certainly no reason why they should not turn it back on us.

Chairman GIBBONS. It seems like to me with that line of reasoning that you are encouraging every country to throw its treasury into this trade struggle and to throw its prestige into its trade struggle.

I am trying to move away from that direction. I am trying to move away from the subsidies in U.S. agriculture. I would be willing to accept some more stringent tests of injury than we do, but it seems that we have to move away from that or we are developing down the road a competitive environment in international trade in which we find ourselves more and more government being the

banker, the financier and eventually the director of which way it goes.

If that is what we are in for, I am not sure I want to get in that race. I am trying to stop that race.

Ambassador YEUTTER. I don't have any disagreement at all, Mr. Chairman, with what you are attempting to do. I share that concern.

Chairman GIBBONS. How can we do it?

Ambassador YEUTTER. So far I haven't seen any very creative ideas as to how we can effectively identify targeting in a meaningful way so we can deal with it. If it is too nebulous and ambiguous, it is just not at all helpful.

We have to be careful, Mr. Chairman, that we identify problems in such a way that it is feasible and practical to handle it. I am not sure that we have done that on targeting yet.

Chairman GIBBONS. There is no doubt in your mind the Japanese deliberately set out to take over the computer chip market. I don't believe there is any doubt in your mind, is there?

Ambassador YEUTTER. No. There is no doubt in my mind.

Chairman GIBBONS. There is no doubt in your mind they deliberately set out to take over the machine tool market and subsidize it and there is no doubt that Brazil is targeting the small airplane market and not even allowing our airplanes in there, and targeting communications market and not even allowing our products in there, and doing all that with the Government prestige and the Government treasury standing behind it.

Mr. Ambassador, I am not interested in just fighting today's battles; I am interested in the battles we have got down the road and unless we begin to erect some kind of incentives for people to trade on a basis that more approaches nongovernment interventions, we are all going to become the socialist republic of the United States, or something else. That is what worries me.

Ambassador YEUTTER. The relevant question, though, Mr. Chairman, is whether we need any additional legislative authority to deal with those issues. We are dealing with them already.

Chairman GIBBONS. We are?

Ambassador YEUTTER. We have got the semiconductor case under a section 301 investigation now, as you know. The Informatics issue in Brazil is also under a 301 investigation, and the machine tool issue is under section 232, and is on the President's desk at the moment.

We have substantial bilateral negotiations going with Brazil on small aircraft. So we can deal with these issues under existing law.

If there is a criticism, Mr. Chairman, it may be that the Government has not dealt with the issues at an early enough stage in the proceedings and as decisively as it should have. In other words, maybe we should be doing more and cut off targeting, if we can call it that, at the pass rather than wait until it goes so long.

Chairman GIBBONS. I am waiting for someone in your position to put forward a proposal or a scheme as to how it can be done. I have tried to put forth some proposals and they all get shot down. I am not getting combat fatigue or any persecution complex from it, but I do want to see us make some progress in the area and, frankly, I will keep pushing these things until I see some progress.

Now, on natural resource subsidies, of course, the finest thing to happen to the world, George Bush to the contrary, notwithstanding, is the collapse and demise of OPEC. You know, if I could stomp on it a little more, fine.

I am going to try. I harbor a bitter resentment against those people who use that kind of practice against us and I am worried about the use of natural resources.

We all know it is a "no-no" in international trade to use the money in your national treasury to support a private business operation as an international trade operation.

There is no argument about that. But in lieu of money some countries have large, attractive pieces of natural resource that they throw at the market instead. That is what I am trying to get at. I don't want anybody using their treasury, whether it be in money or in kind, to throw at our private sector economy here and to injure it.

Now, how are we going to get at that? We have been talking about it now for 2 years. It passed the House of Representatives 2 years ago. It could pass it again in my estimation and it may well pass it again, but let me hear you.

What are you going to do about the practice that I complain of?

Ambassador YEUTTER. We have done quite a bit of thinking on this subject, Mr. Chairman, over the last few months since I have returned to government because I concur with your assessment of the onerous nature of these practices.

There is no doubt in my mind that many of the practices that you cite are what most Americans would construe to be unfair in terms of international trade.

So there is a problem here. It is not that we are tilting at wind mills. There is no question that there is a problem here that merits a solution. The question is how to identify this animal, if you will, and then how to cage it.

The identification itself is a bit of a problem, as you know, from your own legislative endeavors, because it does not really fit the subsidy category very well.

It does not fit the dumping category very well, and it does not fit the ordinary export restriction categories of the GATT rules very well. So we need to find a different niche in the spectrum of international rules to deal with it.

That is part of the problem, whether we deal with it domestically or multilaterally or both.

The other question, even the more serious one, is what is the answer. How does one cage this animal? One way to cage it, of course, is simply to define it as a subsidy as your legislation would provide, but the problem with that, as I indicated earlier, we begin then to prostitute the definition of subsidies. This, then, may cause us a lot of difficulty elsewhere, because the specificity test has been designed to keep subsidy practices of every kind from coming under the cannon of duty aegis which could be chaotic in terms of administration.

So there is some rationale, and I think persuasive rationale, for the specificity test. We ought to think very seriously before we go beyond that.

One more comment, Mr. Chairman, and I will turn back to you.

We are getting some experience obviously on this issue with the timber case with Canada at the moment. In fact, Ambassador Woods is in Canada today negotiating on the issue. I hope that we will have some meaningful lessons from that experience to share with you relatively soon, perhaps even before this legislation moves through its process.

In other words, it is certainly possible we will have some specific recommendations for you in this area relatively soon, but I don't have them for you this morning.

Chairman GIBBONS. Thank you, Mr. Ambassador.

I am going to pursue this conversation with you a little further. I will turn it over to Mr. Crane for his observations.

The historic definition of subsidies has been in our law for a long, long time. It said any bounty or grant given by a government to a private person to use in a product for export was a subsidy and was countervailable. It requires injury.

Anybody that would grant such clean language and pure language—it is hard really to change it.

Now, as I look at this matter, administrative agencies, the Department of the Treasury was one, got to modifying what was meant by a bounty or grant and for years they just took the law into their own hands and didn't enforce it, didn't do anything until Congress finally revolted. I remember bringing those people here right where you are sitting and talking to them about it in long public sessions and executive sessions. Never could get a decision out of them.

In 1974 we finally, out of utter failure to get Treasury to do anything after years of talking with them, just moved it over to Commerce.

Then we came along and we gave up the injury test. We made all kinds of concessions but we have gotten nothing for it as I see it.

We got a subsidies code that isn't worth the paper it is written on, got no teeth in it, further dilutes the definition of subsidy. Now, unless we can take it into subsidies we are all going to be socialist republics.

Ambassador YEUTTER. Mr. Chairman, we, the United States, certainly do not deserve any gold stars for the way we have negotiated this issue internationally through the years. As you point out, the basic result has been that we have agreed to an injury test without getting anything of consequence in return.

But notwithstanding all that, the generally accepted definition of subsidies globally today among our GATT partners makes a distinction between subsidies that——

Chairman GIBBONS. That is where you and I disagree, I guess, Mr. Yeutter. I think it is time the United States begins to lead in these areas. We cannot go to the least common denominator that these countries all set. Most of them are much more highly socialized than we and most are on the path of becoming much more highly socialized than we are.

I don't want our country to go that way. I don't think Ronald Reagan wants his country to go that way. I think we have to draw the line and we have got to begin to set a higher standard for ourselves and for the world. The only reason we have got a GATT now and the only reason we got good rules, what rules we have in

GATT is because the United States insisted on it. I think it is time for us to insist again to take the spirit of 1946 and 1947 and 1984 and put it into practice.

We are the biggest market. We have got—we are the carrot——

Ambassador YEUTTER. That is why I suggested earlier, Mr. Chairman, we do this in the next GATT round. We would be happy to provide the leadership but we cannot do it unilaterally and mandate our will on the rest of the world.

Chairman GIBBONS. That is where you and I disagree. That is where you and I disagree.

Ambassador YEUTTER. We can do it but they will retaliate.

Chairman GIBBONS. Unless we get a higher standard, unless we are willing to set a higher standard we are going to constantly be brought down by the countries who want to set their standards, that want to turn themselves into socialist republics.

Ambassador YEUTTER. That is fine if we are prepared to pay the price in retaliation because under the existing subsidy code our trading partners could clearly retaliate against us if we took the interpretation that is being suggested here.

So if we want to pay the price of retaliation we can obviously move unilaterally on this or any other issue, but that is typically not been the modus operandi of this country.

Chairman GIBBONS. Well, I only have a vague recollection of what happened in the 1940's, but I am afraid unless we take a more vigorous stand, there is no hope for the international trading system except that we eventually will be throwing treasuries against treasuries, whole public systems against whole public systems.

I hope that that is not the vision of the world trading system that you have.

Ambassador YEUTTER. Well, I think we can negotiate this issue in the new GATT round. We discussed it as you know, Mr. Chairman, at the Quadrilateral Trade Ministers meeting in San Diego in January. The United States had a paper on the table on this issue in that meeting. It was well-received by our trading partners at that time. We all agreed that we try to have it on the agenda of the new GATT round.

We are all pushing for it in the Preparatory Commission in Geneva and if we get it on the agenda, we can negotiate a solution. But that is a different answer than legislating a solution today.

Chairman GIBBONS. Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman. Thank you, Mr. Ambassador.

I had a meeting with Under Secretary Bruce Smart back a few weeks ago, and he indicated to me at that time that if the world had completely free trade in practice, the entire world, that it would have anywhere from a 10 to 20 percent impact on reducing our trade deficit.

Does that fundamentally jibe with your understanding of the role of trade per se and trade regulations, restrictive trade regulations in this total picture?

Ambassador YEUTTER. I would say, Mr. Crane, that is probably a relatively accurate short-run estimate. In the long run I would be even more optimistic than that. In other words, I have a great deal

of faith in the competitiveness of American businesses and I believe we would do a lot better than that over a period of a few years.

Mr. CRANE. The reason I raise that is, I, like all of my colleagues, am keenly disturbed over the mounting trade deficit this country is suffering, but it is obviously a very complicated problem and it has ingredients, it seems to me, that go vastly beyond rectifying bad trade laws in trying to achieve some balance in our trade relations.

I think of a number right offhand, one, our restrictive practices on sale of cut raw timber from Federal lands. You want to address the trade deficit, that would be a contribution. All of Alaskan oil would be a contribution, and the elimination of FDA requirements on products going out of this country that currently force businesses, if they want to sell them abroad, to open up businesses outside our shores; the IMF conditions for lending money to countries that tell them you have to put barriers up to imports and in some cases, there is evidence that they even pressured, as in the case of Thailand, a national government to debauch its currency and almost cause the overthrow of a friendly government that has been a strong ally of ours.

Then there is the role of the deficit, and the high real interest rates that we have been paying that have contributed certainly to the over valued dollar, which by many estimates is still over valued.

Turning domestically, it seems to me there are things we are doing to ourselves, too. In the auto industry, for example, I have heard a report recently that all of the Federal regulations on the manufacture of American cars add $1,000 on the average to the cost of an American automobile.

I just saw something in the Washington Post on the first of this month that plans for the importation of the Porche 959 had been scrapped because they cannot meet U.S. safety and pollution regs and a $150,000 Porche, if it were to meet those regulations, if it were Americanized as they said, would end up costing $300,000 in our market.

These idiotic phase standards, who cares what mileage you get on an automobile. You know, that is all predicated on stupidity anyway. The initial premise was we were running out of fossil fuels and that was refuted by our own Government experts at the same time, but not dramatized when we imposed those silly standards on Detroit.

In addition to that our Tax Code has to be viewed as a big factor. Our taxation of interest, dividends, and capital gains, unlike the Japanese, contributes I think to our trade imbalances and we are not addressing that clearly with the current tax legislation under consideration.

But in addition to that, there are some trade components that are disturbing. In regard to intellectual property rights, anything you can do to tighten up legislatively the authority to penalize anyone guilty of stealing somebody else's property—I am totally for that.

I certainly favor stiffer penalties for dumpers. It seems to me that for dumping on a second occasion by the same company if you find evidence of that, there ought to be some denied access to the

U.S. market for a period of time. Otherwise we slap them on the wrist, under current practice, and it is no disincentive to continue dumping.

In addition to that, there are concerns I have about the pending legislation with regard to mandated retaliations.

I feel that your role as the U.S. Trade Representative should be greatly enhanced. On the other hand, I do feel that you cannot take the constitutional authority away from the President, even to ultimately look at broader concerns that may be involved. Again, an article in the Post on March 30, talks about the sandbagging of Secretary Shultz when he was in Turkey. He was talking missile bases and they were talking textile exports.

There was a linkage there, and there are considerations, obviously, that go beyond just the immediate question of resolving a trade imbalance.

I think those are areas that we are going to have some difficulties with in terms of getting a consensus on the committee; especially your role divorced from President Reagan's ultimate authority, and simultaneously the mandated retaliations.

Something in your testimony that I saw—maybe I misinterpreted this—was on the review periods on 301 cases. My recollection was that you had expressed the hope that we might be able to get that down from a year to 6 months, and even possibly weeks with computerization.

Is that still a hope that you have?

Ambassador YEUTTER. That would be on dumping cases.

Mr. CRANE. Only dumping cases?

Ambassador YEUTTER. Yes. The hope would be that in these high tech areas like semiconductors that we could design a program where we could speed up the responsiveness because of the rapid intergenerational turnover in high tech areas.

So it would be dumping and perhaps also in countervailing duties if that were happening. So we need to look at the law in those areas.

We are getting, learning things from the semiconductor matter through one case that may have applicability there. Also to the earlier point you mention about additional penalties or more severe penalties for recidivism, that may demand attention as well.

Mr. CRANE. In that regard, there is the SIA-301 case filed originally back in June, and again in July your offices initiated this 301 case against the Japanese by the semiconductor industry. How important do you regard Japan market access as an aspect of that case?

Ambassador YEUTTER. That may be one of the most important, if not the most important 301 case we have ever had, Mr. Crane, and it is one we are still spending a lot of time on.

As you know, Japanese negotiators were here this last week and we were not terribly pleased by the flexibility that was demonstrated by them in that particular phase of the negotiations. We are reassessing that case now in light of the intransigence that was demonstrated and certainly it is important that we communicate to our Japanese partners that they are going to have to demonstrate a lot more flexibility in that case very soon or we will have no choice but to take some very harsh actions.

In particular we are having difficulties with access to the Japanese market on semiconductors. We are not so concerned about the U.S. market side because we believe we can make some of the changes in the antidumping laws that would be appropriate for protecting our interests on the U.S. side.

It is penetration of the Japanese market that is of concern, and what has been offered thus far is a modest offer indeed, and almost nominal in scope and we are clearly not pleased with that result to date.

The Japanese continue to protect their markets with great vigor against imports notwithstanding their gigantic global surplus and gigantic bilateral surplus with the United States.

Mr. CRANE. Based upon the newspaper reports I read about it, I didn't find a lot to be encouraged about in what I saw that was accomplished at that meeting. But there was another thing that disturbed me profoundly in the newspaper account of that meeting, and that was the Justice Department's comment that they were not there for fear of antitrust violations.

It seems to me that there is another area of stupidity in our law where we could learn dramatically from the Japanese that we are dealing in world markets, and make some significant revision of our antitrust laws.

I would commend those American businesses that took that initiative to try and negotiate resolution of these problems.

I think that sort of thing should be encouraged. There was just a kind of a chilling aspect to that one reference, maybe it was inadvertent, and that is not what they meant to say, but that disturbed me.

There is one other thing and it will come in the testimony of Mr. Kirkland when he appears. It is something that has bothered me for quite some time. He proposed that any country that fails to take steps to meet internationally recognized labor rights should be denied most-favored-nation treatment as long as that country remains out of compliance.

He adds that competitive advantage must not be gained through denial of the right of freedom of association.

I introduced legislation immediately after President Reagan granted MFN to Romania to repeal that status for Romania, and second, repeal Presidential authority to make that kind of concession.

Thus far those two pieces of legislation have not proceeded very far, but that is not the only instance, as you well know, where we are granting MFN to nonmarket economies that do not meet the standard to which Mr. Kirkland refers to.

Would you recommend or have any comments on inclusion in this legislative package of some kind of stipulations on trade regulations that would foreclose that option?

Ambassador YEUTTER. We obviously want to see the wording of any such provision, Mr. Crane, because it can have a variety of meanings but as you know, this is an issue that Congressman Pease has raised on many occasions, including during our retreat in Florida, and is one I have commented on before in testimony here.

My judgment is that we definitely do need to give recognition to worker rights in the whole international sphere and we are still hopeful we might accomplish something in that direction in the new round of GATT negotiations.

If it is feasible to put something in the legislation that would be helpful to us, we would be pleased with that, but we would need to look at the language to be sure it was something that would be satisfactory from our standpoint.

Conceptually I would be very responsive in a positive way.

Mr. CRANE. I thank you very much for your testimony, Mr. Ambassador, and we yield to our chairman.

Mr. PEASE [presiding]. Thank you.

Mr. Gibbons had to leave the room for a moment, and he did designate me as chairman and I would like to assure my colleagues that he also designated me as the next person to ask questions.

I knew Bill Frenzel would be skeptical about that, and Mr. Schulze.

We only have a few minutes and I am conscious of that.

Ambassador YEUTTER. Mr. Pease, I am prepared to stay on if necessary. I really believe we ought to do this up right so I will delay my attendance at the White House if necessary.

Mr. PEASE. Thank you very much, that would be most helpful.

Ambassador Yeutter, I would like to join the chairman in expressing some frustration. You have come today as you always do to give us an honest response to the questions we ask of you. In this case, an honest response to the draft bill that Mr. Gibbons has been circulating.

But you have told us you oppose much of the bill, at least you have serious concerns about much of the bill. I view this bill as a middle course between protectionism, which is certainly always lurking in the background, and doing nothing or doing something which is so ineffectual as to be considered as doing nothing.

What I am afraid of is that if we were to accept your recommendations and purge this bill of the number of provisions that you have in mind, that it would be viewed as an ineffectual piece of legislation, not likely to deal effectively with trade problems; and therefore, make the Congress choose between an extreme, the extreme of doing nothing in their opinion; or the extreme of protectionism.

That concerns me.

I hope that as we work with you over the next few weeks on this trade bill that you might keep that in mind.

The other concern I have which you may want to comment on, is that there is a widespread perception in Washington and I think in the Nation that the administration wants to do only enough in the trade area to head off protectionism, that it is basically committed to letting the free market operate.

What steps have been taken, including the commendable self-initiated 301 cases of the last several months, have been done in response to protectionist pressures in Congress.

The House Members on this committee probably have a different estimate of the public mood about protectionism than the administration perhaps, because we run every 2 years. We feel we are close

to the public and that protectionist sentiment is running pretty high.

Therefore, an effective response would be in order.

I think Members of Congress, particularly of this committee, want to do far more than just stoke the protectionist fires. We really do want a level playing field. We really do want to eliminate unfair trade practices so that we can go back and tell our constituents that the game is being played fairly around the world.

I would hope that the administration might share that same desire.

I would add parenthetically that I don't have any doubt but that you personally do share that desire.

Finally, I guess as sort of a wrap up to this introduction I would be interested in having your reaction to how this bill—we are working it now and is likely to come to the House in May or early June—how this bill fits in with the schedule for override vote on the textile bill veto in early August? In other words, it seems to me that you—I am confident—are opposed to an override, and that your best weapon to avoid an override is the existence of a House-passed bill which is viewed as an effective piece of trade legislation.

That goes back again to the tension between what you would like and what is in the draft bill.

Ambassador YEUTTER. OK, thank you, Mr. Pease, let me just make a couple of comments in response to that.

First of all, with respect to the reaction of the general public to what the administration has done and what is occurring on the trade scene nationally and internationally, your perceptions are more direct than ours because you are out in your home districts every week and you hear the reaction of people to their real world settings.

There are a lot of people in the country who do not yet appreciate how much the administration has changed its policy positions and its level of aggressiveness over the last 9 months or so. We need to have you and your colleagues wave the flag for us perhaps so that that message gets out.

Or we certainly need to do a better job of ensuring that it gets out through the mechanisms that are available to us because it has changed attitudinally in my judgment, there has been a very significant change in terms of emphasis and priorities and the way of handling issues and what we are doing today is different in a very substantial way from what was occurring a year ago at this time.

It is not just a free and open trade philosophy. That is important and that is still the basis of the administration's viewpoint in this area, but it has a very strong fair trade dimension today and one that is clearly much more evident to you all here in Washington and around the world than it is to a lot of our constituents out in the United States.

So I wish that your constituents could talk to our friends in the European Community and ask them if we are being insufficiently aggressive on trade issues or talk to our friends in Korea and Taiwan on textiles or whatever the issue may be because certainly the perception of a change in the administration's modus operandi is widespread internationally today.

But as long as that perception exists out in your home districts, it is a problem for all of us, it is a problem for you and the impact on the legislative environment and a problem for us in the impact on the administration's influence in other areas as well.

We just have to keep working at that.

With respect to the potential benefit of having a House-passed trade bill in front of the American public prior to August and the effect that might have on an override vote, I would simply respond as follows: I hope that what ultimately passes the House in the way of trade legislation represents a work product that would be pleasing to the administration. Whether it will or not only time will tell.

Certainly doing something different is not necessarily doing something better, and it seems to me that what we have to try to do, Mr. Pease, is make sure the legislation that emerges from this subcommittee and then the committee and then the House as a whole truly is beneficial and helpful on the world trade scene and doesn't just manipulate language in such a way as to look useful but not really be useful.

That is the challenge. International trade is too important for us to have legislation that is harmful rather than helpful and it is too important for us to alter structurally relationships within the Government or in the private sector in a way that would be detrimental rather than beneficial.

We have to be careful we don't think legislatively that would have short-run political payoffs but be detrimental to the country in the long run and maybe even politically detrimental to you and everyone else in the Congress in the longer run.

So there are some difficult tradeoffs there. We understand that very well and understand also the importance of the vote on the override.

My additional comment there would be that I think the best thing we could do to avoid an override is to carry out trade policy in an effectual way between now and August on everything, not just textiles and apparel but in other areas as well, and we will certainly try to do that.

Mr. PEASE. Thank you, Mr. Ambassador.

Mr. Chairman, in recognition of the Ambassador's time constraints and the other members of the committee wishing to ask questions, I would like to ask two brief questions that I think will take responses of no more than 30 seconds.

First of all, Mr. Ambassador, from a practical point of view how many 301 cases could your shop self-initiate in a given year?

Ambassador YEUTTER. That is really a difficult one to answer, because there is so much variation between and among the cases. It depends on the complexity of the case obviously.

But to give you a ball park number over the last few months we started self-initiating in September as you know and then also picked up the pace on some of the cases that had been filed by industry and obviously the answer to your question depends on the number of cases filed by industry on its own beside what we self-initiate, but we have in the mix now I suppose close to 10 active cases and that is a pretty hefty load.

We could handle more of those if they are relatively simple cases, and if there are not a lot of industry cases flowing in, but if it is something like semiconductors that becomes very demanding not only on us but on other people throughout the Government who have to devote resources to them.

So if we went from 10 to 20 cases we would have a very full load indeed.

Mr. PEASE. Thank you.

The last question, in terms of the timetable for authority for a new—negotiating a new GATT round when do you have to have authority from the Congress? When do we need to do that?

Ambassador YEUTTER. Well, in a sense we really don't have to have authority, Mr. Pease, until the negotiation concludes and we bring a work product back for approval by the Congress, but obviously that is not a desirable result.

Ideally we would have it before the new round is launched in September. That would certainly make our trading partners feel more comfortable.

As you know our existing nontariff negotiating authority runs until January 1988 and so certainly we can wait another 18 months or thereabouts if need be and have our trading partners feel relatively comfortable because they know we have authority in that period, even though we don't have tariff cutting authority.

So the answer is we would really go for a long time without having the authority, but our trading partners have to take a lot of that on faith that the authority will ultimately be provided by the Congress. Certainly they will be more relaxed about it if an authority is provided at an early date.

Mr. PEASE. Thank you, Mr. Ambassador.

Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Frenzel, Mr. Schulze, and Mr. Vander Jagt, in that order.

Mr. FRENZEL. Thank you.

Chairman GIBBONS. We have to depend on you in the time situation. I don't want to cut off any of our colleagues, but you told us you have time problems.

Ambassador YEUTTER. Mr. Chairman, I said I would stay on if necessary because it is important that we have a good coverage of these issues.

Mr. FRENZEL. Mr. Ambassador, thank you for your testimony.

You mentioned the 301 computer chip or semiconductor case which you are now engaged in discussing with Japan. The Prime Minister of Japan is coming to town shortly. Is there any hope that that case might be resolved prior to his arrival?

Ambassador YEUTTER. My judgment, Mr. Frenzel, is that there is no chance at all that it will be resolved ahead of his visit.

I was hoping a few weeks ago that that might be possible but there has not been sufficient movement on the Japanese side to make that at all a logical possibility.

Mr. FRENZEL. So the Prime Minister's trip is not likely to have any great effect on that case and we will continue to pursue it as aggressively as ever?

Ambassador YEUTTER. Absolutely. I would hope that the Prime Minister is thoroughly briefed on that dispute when he comes to

Washington, DC, because it might well arise on his agenda and I would certainly hope that he will pay due attention to the case after he returns to Tokyo, because it may become an even more of a live issue after his return.

Mr. FRENZEL. It has become a great symbol. It is among a group of 301 cases, the real blockbuster case. Our success in that one is going to be one of the ways that the world evaluates how aggressively the administration is pursuing these things.

So I hope that it will be brought to the attention of Prime Minister Nakasone when he is here and that we will pursue it as aggressively as we have been, and I am delighted to have your assurance.

I heard you give your testimony and it looks like we have a long way to go in resolving differences between the draft bill and the administration position. I was not quite clear on section 337. It looked to me as though you agreed to both the removal of the injury requirements and redefinition of industry test, and that you really had just sort of drafting details that you wanted to submit.

Is that correct?

Ambassador YEUTTER. That is correct.

Mr. FRENZEL. Is there any worry on your part that our waiver on 337 will be affected by the change in the law? You note in your testimony that we have one Canadian case on which there is a GATT panel report, and you are hanging your hat on that, and our charge of injury won't make any difference?

Ambassador YEUTTER. Yes, I am comfortable with that, Mr. Frenzel, for two reasons. One, we have a splendid general counsel who is here this morning and I am sure he will make sure that our position ultimately prevails in the GATT. But secondly, I have no sympathy with thieves and it seems to me that where these kinds of issues are involved, there has to be rational support for the provisions that are involved and to me, it is completely appropriate for the United States to take a very strong stance in this area.

We have a lot at stake.

Mr. FRENZEL. With respect to 201, the committee draft changes the causal standard in times of recessions. Your testimony covered that pretty well but do I understand correctly that you would prefer to have the standard remain as it is?

Ambassador YEUTTER. The standard on what, Mr. Frenzel, I missed the first part of your question.

Mr. FRENZEL. Of the main cause of——

Ambassador YEUTTER. On the injury, the definition?

Mr. FRENZEL. Yes, whether it is the imports that are the principal cause or whether the recession is the principal cause.

Ambassador YEUTTER. Yes, absolutely, Mr. Frenzel. We don't see any reason to tamper with that standard. It is one that is well accepted internationally. It is one that we have used here in the United States for a substantial period of time, and we believe that the downside of changing that far exceeds any upside benefits.

Mr. FRENZEL. As I understand further with respect to 201, you object to the double track?

Ambassador YEUTTER. Yes, and as I indicated earlier that second track causes us a very great difficulty because we just believe it would be totally unworkable and turn out to be one of the worst legislative answers we could possibly provide in this area.

Mr. FRENZEL. I am troubled by it myself, but I assume you are willing to work with the committee to look at alternatives to try to assuage the concerns that have been raised?

Ambassador YEUTTER. We would be happy to work with the committee because we know 201 is important to this committee and it is important to us, too, because of the tremendous pressure we have had on our import sensitive industries.

We certainly have to make sure we don't do something counterproductive in this area.

Mr. FRENZEL. Then you are objecting to the mandatory retaliation in 301 under the draft bill.

Ambassador YEUTTER. Yes.

Mr. FRENZEL. And to the mandatory deadlines.

Ambassador YEUTTER. Yes. That is correct.

Mr. FRENZEL. In regard to the problem about the discretion of the President, let's take the 301 case with Japan, for instance. That is going to take a lot of work and negotiation. If we rejected one offer from whoever we are negotiating with, suppose we came to the deadline, would that discourage negotiations or encourage them or what?

Ambassador YEUTTER. Well, it seems to me, Mr. Frenzel, that if we had mandatory retaliation on a specified date that one runs the risk that one's trading partner—in this case Japan—would simply throw up its hands and say, you know, we have been negotiating in good faith, we are doing our best to solve this case, we just cannot get it done by the time of your deadline expiring.

So if you have to retaliate, Uncle Sam, then you will have to retaliate and we will counter-retaliate.

To me that becomes a frustrating exercise and one where we would find it difficult to defend the equities involved.

That is why it is better to have some flexibility in this case.

Section 301 is a very strong weapon to begin with, and to try to make it even stronger through mandatory retaliation seems to me to offer possibilities of great mischief. I gave the leather and footwear case as an example, and semiconductors fall in the same category. These are complex, difficult cases to negotiate, and to try to deal with issues of this magnitude and of this complexity in a relatively short period of time is difficult.

We certainly ought not twiddle our thumbs when we are negotiating under 301, but at the same time I certainly do not believe it is helpful to have our hands tied and to put our trading partners in a position where they have no choice but to just await our retaliation.

There is leverage there, Mr. Frenzel, of course, and we can say to them, after all we are within 1 week or 2 weeks or whatever it is of our deadline, you are going to have to get serious about this and see if we can resolve it, their answer and a very legitimate one, may be, you know, there is just no practical way we can get there.

If you have to retaliate, retaliate! That of course is not a very wholesome result.

Mr. FRENZEL. Yes, I believe I understand the problem. I do think, however, that where the chairman is trying to go and what you are trying to do is not as far different as the language being employed by each of you would indicate.

I have a feeling that it would be much nicer if we could arrive at that square by agreement rather than having to go to the mat.

I hope that we will continue to work on it.

Your testimony has been extremely helpful, I believe.

Mr. Chairman, I yield back.

Chairman GIBBONS. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

Mr. Ambassador, thank you, welcome to the committee.

We are always happy to have you and I never cease to be impressed with the vigor and enthusiasm which you have brought to the office. It is very heartening and I hope it continues.

Ambassador YEUTTER. Thank you.

Mr. SCHULZE. Mr. Ambassador, I can understand the administration's concern and their view that there is no need for us to tamper with Presidential authority. But in light of the fact that it has taken the administration over 2 years to act on the 232 case on machine tools, let me say that you are building a fire under the Congress and we are going to act, and of course it is a reaction.

So as much as I understand your concern let me say that I think that you brought it on yourself.

Ambassador YEUTTER. I cannot disagree with that, Mr. Schulze, because as you know, I have been one of those within the administration who has been clamoring for a resolution of the machine tool case and has been critical of some of my colleagues for the delays that have resulted over the last 2 or 3 years.

That is—that puts me in the position of second guessing people's actions which took place before I came back into Government and that is an uncomfortable position, but nevertheless I agree with you that governments have a responsibility to be responsive and to make decisions and to me a 3-year time period on any case of that nature is simply indispensable.

Fortunately that case is now moving towards a Presidential decision which should occur within just a few days. But as you well know, Mr. Schulze, that is why the Congress enacted its timetable in the countervailing duty law a few years ago, and clearly that provides a motivation for timetables in other areas, too, when administrations are insufficiently responsive.

Mr. SCHULZE. Well, I hope you continue needling them and try to get some action on that.

Mr. Ambassador, in regard to nonmarket economies, I intend to offer amendments and once and for all try to bring about a resolution to this problem in our statutes.

Do you have any preferences as we go through this process? Do you have a suggestion as to how to proceed with the realization that anything we do will create some kind of a problem. I think the time has come to take the lesser of whatever the problems are and go ahead and solve them.

Do you have any suggestions?

Ambassador YEUTTER. I would be glad to comment on that, Mr. Schulze, because I think it is a very important issue and it is one that we, the U.S., have not dealt with well at all in the past.

We have been frustrated by this process for a long time.

As you know, we will become increasingly important as China becomes a more significant factor in the international trade picture.

There are not any good answers yet but I also concur with your judgment that maybe an inadequate answer is better than no answer at all.

In that respect, the two major proposals thus far have been a pricing test, artificial pricing test of the kind Senator Heinz has discussed on the Senate side; or alternatively what has been used to date, internationally a predatory pricing kind of standard based upon injury.

It seems to me that the latter is very nebulous and so far not terribly workable.

So my inclination is to suggest that we try to see if we can make an artificial pricing standard work and have that either be what Senator Heinz has ben working on or modifications there. We would be glad to work with you, and see whether we can come up with language in that direction that might be useful.

There isn't an official administration position on this to my knowledge, but we will certainly work with you because it is an issue that does need to be confronted.

Mr. SCHULZE. I have also been working with our committee staff on some other alternatives and sometime in the next couple of weeks we will sit down and go over them with you and see if you have any preferences.

Ambassador YEUTTER. Good.

Mr. SCHULZE. Clayton, for some time I have been concerned about a trigger mechanism for import penetrations that would alert us that we ought to look at the situation. We have to find out whether there has been targeting, and whether American industry is unable to compete in the world market, I am planning on offering something in this trade bill on that subject.

What I had in mind was if import penetration reached the point of 30 or 35 or 40 percent, no matter what the cost, that you would then be called upon to make an investigation and report to us on the reasons for this type of penetration.

Do you have any thoughts on that one?

Ambassador YEUTTER. That is a concept that really has not had any discussion within the administration since I have——

Mr. SCHULZE. You would not be required to act other than to make a report.

Ambassador YEUTTER. I understand.

We have not discussed that since I came back into the Government, but it is an interesting thought because we need to try to address that.

That subject was involved in the earlier colloquy with Mr. Gibbons involving the textile and wearing apparel coming into the United States. It has happened in a number of other areas where we have a tendency to shut the barn door after the horse is out.

I assume the intent of your provision is that we somehow trigger a process that will get the Government to focus on the issues before that occurs. It seems to me that is a worthy topic for exploration. Obviously choosing a number is difficult because we could be

spending all our time engaging in studies and clearly it leads to the question of what do you do if and when a problem emerges.

But it seems to me that the answer to that is not all unclear, there are lots of things we can do at that point in time.

I would look positively on that, Congressman Schulze.

Mr. SCHULZE. Thank you, and if you would have your people give some thought to that I would be happy to have their views. It seems to me we have to do something along this line.

I share your concern with the percentage, the figure or how you arrive at that, but it seems to me we do need some early warning system.

I have other questions but I know your time is limited, and I will catch you later. Thank you.

Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Ambassador, for your helpful testimony and I will not detain you any longer from your previously scheduled appointment.

Ambassador YEUTTER. Thank you, Guy.

Chairman GIBBONS. All right, thank you, Mr. Ambassador.

Mr. GUARINI. Mr. Chairman.

Chairman GIBBONS. Oh, excuse me, Frank, sorry.

Mr. GUARINI. I thought you might have needed help on this side, so I——

Chairman GIBBONS. We always need help.

Ambassador YEUTTER. He has been doing very well, Mr. Guarini, I don't think he needs any help.

Mr. GUARINI. Mr. Ambassador, I thank you for all the cooperation you have given us and thank you for how effective you have been as our USTR. I am sorry to be late.

The thrust of your testimony is that you disagree with a national trade policy negotiating objectives in H.R. 3777 which is sponsored by the Republican side, by Bob Michel, who testified before this committee very strongly for it.

Am I correct?

Ambassador YEUTTER. Well, I certainly have no disagreement, Mr. Guarini, with having negotiating objectives. The question is to what degree our hands are tied in the negotiating process by those objectives. I indicated earlier that it takes 90 countries to tango in GATT negotiations so we are not in a position where we can impose our will on anybody.

We will try to meet as many of the negotiating objectives that we can and of those mentioned in your proposed legislation, I don't have any trouble with any of them, Mr. Guarini, but we have to be careful we don't get ourselves in a box where we jeopardize the entire negotiating process.

Mr. GUARINI. The Republican bill, H.R. 3777, the bill I put in, H.R. 1950, and the Ways and Means Committee bill, all call for trade remedy reform in our procedures, including changes to section 201, 301, targeting, natural resources, doing something with TAA, and there have also been specific suggestions made by the Republican bill.

It is not only the trade policy objectives but also specific trade reform in our remedies and laws. What I am just trying to clarify

is that you don't want any changes to take place, that you feel that macro economics would more or less take care of our major trade problem; that monetary policy is the key; and that trade reform is only a minor issue. Is that a fair statement?

Ambassador YEUTTER. Oh, that is probably an unfair statement, Mr. Guarini, or at least it is overly simplified.

We had quite a bit of discussion on all that already this morning, but the essence of what I have said——

Mr. GUARINI. I won't ask you to go over your material because I will read it in the record and I will certainly read your report.

Ambassador YEUTTER. I will just give you the essence of what I said. Certainly we would like to see both fair trade and free trade in this world. We have been doing a lot of things as you well know over the last several months on the fair trade side over and above what we are trying to do on the free trade side. Certainly we are doing a lot of things in the micro sector as well as in the macro sector.

There is no doubt that we still feel and I believe appropriately so, that what happens in macro economic policy is much more determinative than what is happening on the micro side. But it is all important.

There is money involved, export sales are involved, and all that, and so I am a strong proponent of strong use of section 301 which we have had under way, and the use of the 307 and 305 and other provisions as well.

Mr. GUARINI. But as far as your office taking some power away—not power from the President but taking some decisionmaking away from the President because he has so many things on his desk, and some decisions could be made by the USTR, are you against assuming any additional responsibility at USTR other than what is in the statute today? Is that correct?

Ambassador YEUTTER. Well, clearly there are—that is a hypothetical question in the sense, Mr. Guarini, the language in the draft bill causes me difficulties. But I wouldn't want to try to deal with all other alternatives. It is just that the buck stops with the President of the United States on issues like this. It seems to me that is the right place to have it happen.

Mr. GUARINI. In the Constitution the buck stops with the U.S. Congress where Congress has the full authority to regulate.

Ambassador YEUTTER. Yes.

Mr. GUARINI. Regulate commerce and trade with foreign nations. Of course what we have done has relegated our constitutional authority to the President, which was wrong in the first instance. However, let me ask you whether or not you are for giving compensation and damages for antidumping. Have you taken a position on this at all? In other words, go beyond the remedies we have today where an industry is injured, and be able to get compensatory damages.

Ambassador YEUTTER. To my knowledge we do not have a position on that. We have had a lot of discussion of the dumping issue because of the semiconductor case, Mr. Guarini, as you well know. We have not commented on that in my testimony.

That has budgetary implications of various kinds to our trading partners as well as policy implications, but I will get you a policy position on that if you would like me to do so.

I would have some reservations about doing that though, I also have some strong feelings that we need to consider additional penalties in this area for repeat offenders. That is not an official administration position either, but that is an evolving view based upon our semiconductor dispute.

Mr. GUARINI. Mr. Lane Kirkland president of the AFL-CIO is going to follow you, and one of the big problems that we have in our country is the cooperation between labor, industry and Government working together as a team.

Do you have any position as to how we can better this relationship so we are not at a disadvantage and pulling our trade policy apart, but rather than putting it together.

Do you have any message for our next witnesses, the president of the AFL-CIO?

Ambassador YEUTTER. Well, I have the highest regard for Mr. Kirkland whom I consider to be one of this country's most talented citizens and I consider it a personal pleasure and privilege to work with him on this and other issues.

His views are certainly worthy of careful consideration by this subcommittee or the administration or anyone else.

My judgment, Mr. Guarini, and just to try to be more specifically responsive to your question, is that this is much more an issue of attitude and people relationships than it is legislation. In other words, we don't have to legislatively mandate or demand that labor, business, and Government work together. We ought to be doing it in any case.

I don't think we need legislative authority or requirements to do that. That is something that ought to happen as a matter of course. We are not too confrontational in my judgment in the United States between labor, management, and in some cases, Government as well. We need to learn to be a bit more cooperative and coordinative as our Japanese friends and others have already learned.

Mr. GUARINI. Some of the bills call for advisory committees where they would work together and develop competitive strategies and make reports to the President and to Congress and outline the policy and plan for industries which are injured. Do you have any problem with that concept?

Ambassador YEUTTER. Well, I certainly do if we are talking about the basic industrial policy kinds of proposals that emerge from that kind of language, because I have always felt that people out in the private sector do a better job of making decisions than Government does and those kinds of programs just inevitably get immersed in governmental activity with somebody here in Washington trying to play God.

So I have a lot of difficulty with industrial policy kinds of measures. I don't happen to think they have even worked all that well in Japan which is typically held up as the example in this area. I really believe in the entrepreneural free enterprise society that we have that we are a lot better off letting the marketplace handle those issues. So I have major reservations about industrial policy

proposals because I think the country will be worse off for them rather than better off.

Mr. GUARINI. In other words, you think that it is not judicious for labor, industry and Government to sit together on the same advisory panel regarding a strategy for a specific sector of industry?

Ambassador YEUTTER. I would be delighted to see industry, Government, and labor sit together on advisory panels, Mr. Guarini. The question of what that panel is asked to do, and if one is asked to do——

Mr. GUARINI. To make reports, findings, recommendations.

Ambassador YEUTTER. Well, if you provide the specific language I will tell you whether I would agree with it or not because that is what is really important. What is the intent of that sitting together? If it is to advise me or the President of the United States on what our priorities in the trade arena ought to be, I would be delighted with that. We have had excellent labor participation in the advisory process.

If it is to go beyond that and plan the U.S. economy, then I have a lot of reservations. It is a question of where one draws the line.

Mr. GUARINI. I understand that, and we are talking about the same thing.

You have no objection to it being advisory, you have only objections if it is to implement.

Ambassador YEUTTER. Depends on what the function of that advisory body is going to be.

Mr. GUARINI. Thank you, sir. I thank you for waiting.

Chairman GIBBONS. Thank you, Mr. Ambassador.

As always, you have been very cooperative in your time and your effort. We have got a lot of work to do. I think it is later than all of us think in this area.

Ambassador YEUTTER. Thank you, Mr. Chairman. It is a pleasure always to work with you and we will clearly continue to do so with enthusiasm.

Chairman GIBBONS. Thank you.

Our next witness represents the American Federation of Labor and Congress of Industrial Organizations, AFL–CIO. Mr. Lane Kirkland.

STATEMENT OF LANE KIRKLAND, PRESIDENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ACCOMPANIED BY RUDY OSWALD, CHIEF ECONOMIST, AND ROBERT McGLOTTEN, DIRECTOR OF LEGISLATION

Chairman GIBBONS. We welcome you here, and welcome your colleagues, Mr. Kirkland. You may proceed as you wish.

Mr. KIRKLAND. Thank you, Mr. Chairman.

Mr. Chairman, I have with me Robert McGlotten, director of legislation of the AFL–CIO; and Rudy Oswald, our chief economist.

Chairman GIBBONS. Glad to see Rudy looking so well. I know he has been through a lot. We are glad to have him here.

Mr. KIRKLAND. I would like to have them available to deal with any of the tougher questions you might throw at me.

Chairman GIBBONS. I am not worried about that.

Mr. KIRKLAND. Thank you.

Chairman GIBBONS. I know you aren't, either.

Mr. KIRKLAND. With your permission, Mr. Chairman, I would like to just give you a short summary of our statement and introduce the full statement for the record.

Chairman GIBBONS. It will be included in the record without objection.

Mr. KIRKLAND. Mr. Chairman, the absence of a strong and predictable U.S. trade policy has contributed significantly to the sharp deterioration of the international economic position of the United States, and left scores of domestic industries and millions of American workers defenseless against plant closings, bankruptcy, farm foreclosures, and recessionary unemployment levels.

The President's Council of Economic Advisers said earlier this year that job losses in the industrial sector were simply the result of improved efficiency and high wages and that anyone who suggested otherwise has, and I am quoting, an inadequate understanding of the benefits of trade.

For the millions of workers whose jobs were lost to imports or declining exports, this explanation provides little comfort. The shoe worker knows she is not overpaid at $6 an hour; the semiconductor worker knows he was efficient but was still replaced by foreign production.

The Department of Commerce estimates that in 1984 alone 2.3 million jobs in manufacturing were displaced by trade. The Bureau of Labor Statistics reports that between 1979 and 1984, 11.5 million workers lost their jobs to plant closing, and layoffs. The administration asserts that reliance on free trade principles results in higher standards of living, both for this Nation and for its trading partners. The average weekly earnings for all U.S. production employees declined more than 9 percent from 1977 to 1985 in constant dollars.

Clearly, the mystical dream world of free trade where this administration stands enchanted is a world that never was and never will be. Where are the free and open markets on which this administration bases its trade policy? Do they exist in Japan, the European Community, Brazil, Taiwan or Mexico?

Are free and open markets compatible with quotas, stringent inspection requirements, discriminatory standards, export subsidies and incentives, industrial targeting programs, buy national policies, export performance requirements, barter agreements, and coproduction requirements?

The truth is that open, closed, free trade, protectionist, are all highly charged words that are not relevant in discussing international trade today. There is a good deal of trade, but it is, with the exception of the United States, guided and recognized by national objectives.

The U.S. merchandise trade deficit in 1985 was 3.5 times higher than in 1980. For manufactured goods alone, America has gone from a surplus of $12 billion in 1980 to a deficit last year that reached $113 billion.

Many are reassured that the U.S. trade problem will soon be history now that the dollar has begun to decline. The dollar remains some 40 percent higher against the currencies of our major trading partners than it was in 1980, and even if the dollar continued to

fall, its impact on the U.S. trade deficit would not necessarily be large. Indeed, Japanese industry and Government officials were recently quoted as saying that the change in the yen/dollar relationship would probably not affect Japanese exports significantly.

Since changes in exchange rates will not by themselves provide the solution to America's trade crisis, changes in trade law and policy are urgently needed.

The AFL-CIO believes that any trade legislation should include: effective relief from injury due to imports and protection from unfair trade practices; protection from unwarranted trade surpluses with the United States; effective labor rights provisions; adequate safeguards in any new round of trade negotiations.

On import relief, the standard used by the International Trade Commission in finding injury should be changed to the international standard where imports must be a cause of serious injury or a threat of serious injury, with trade adjustment assistance automatic. The U.S. Trade Representative should retain the discretion to modify the ITC recommendation, but should be required to take action to provide equivalent relief.

When foreign countries have practices that burden, restrict or discriminate against U.S. commerce, the United States must go beyond what have been described as symbolic actions and vigorously pursue practices that are harmful to U.S. domestic interests. Amendments in H.R. 1950 to require action in response to foreign industrial targeting should be enacted as a curb on the coordinated and predatory practices of other countries.

To reduce the trade deficit, countries that maintain both excessive trade surpluses with the United States and discriminatory trade practices should be required to gradually reduce their surplus by opening their markets to U.S. exports or reducing their own exports to this market.

Any country which fails to take steps to meet internationally recognized labor rights should be denied most-favored-nation treatment as long as that country remains out of compliance. Competitive advantage must not be gained through the denial of the right to freedom of association, refusal to insure a safe work environment, the exploitation of child labor or other objectionable practices. If new multilateral trade negotiations are to take place, attention should be directed to readjusting currency values; correcting the inadequacies of GATT safeguard procedures; solving the serious problems with counterfeiting and intellectual property rights.

That covers the highlights of our proposals. We, of course, stand ready to discuss them with you in greater detail at any time.

We commend the Speaker for the high priority he has given trade legislation and we applaud the subcommittee's intention to proceed rapidly with comprehensive trade reform. Speedy action on effective trade legislation is vital to American workers and the Nation.

[The prepared statement follows:]

86-10

SUMMARY OF
TESTIMONY OF LANE KIRKLAND, PRESIDENT,
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
ON TRADE REFORM LEGISLATION

April 8, 1986

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Where are the free and open markets on which this Administration bases its trade policy? Do they exist in Japan, the European Community, Brazil, Taiwan or Mexico? Are free and open markets compatible with quotas, stringent inspection requirements, discriminatory standards, export subsidies and incentives, industrial targeting programs, buy-national policies, export performance requirements, barter agreements and co-production requirements?

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On import relief, the standard used by the International Trade Commission in finding injury should be changed to the international standard where imports must be a cause of serious injury or a threat of serious injury, with trade adjustment assistance automatic. The U.S. Trade Representative should retain the discretion to modify the ITC recommendation, but should be required to take action to provide equivalent relief.

When foreign countries have practices that burden, restrict or discriminate against U.S. commerce, the United States must go beyond what have been described as symbolic actions and vigorously pursue practices that are harmful to U.S. domestic interests. Amendments to H.R. 1950 to require action in response to foreign industrial targeting should be enacted as a curb on the coordinated and predatory practices of other countries.

To reduce the trade deficit, countries that maintain both excessive trade surpluses with the United States and discriminatory trade practices should be required to gradually reduce their surplus by opening their markets to U.S. exports or reducing their own exports to this market.

Any country which fails to take steps to meet internationally recognized labor rights should be denied most-favored-nation treatment as long as that country remains out of compliance. Competitive advantage must not be gained through the denial of the right to freedom of association, refusal to insure a safe work environment, the exploitation of child labor or other objectionable practices. If new multilateral trade negotiations are to take place, attention should be directed to readjusting currency values; correcting the inadequacies of GATT safeguard procedures; solving the serious problems with counterfeiting and intellectual property rights.

That covers the highlights of our proposals. We, of course, stand ready to discuss them with you in greater detail at any time.

We commend the Speaker for the high priority he has given trade legislation and we applaud the Subcommittee's intention to proceed rapidly with comprehensive trade reform. Speedy action on effective trade legislation is vital to American workers and the nation.

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**TESTIMONY OF LANE KIRKLAND, PRESIDENT,
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
ON TRADE REFORM LEGISLATION**

April 8, 1986

Mr. Chairman, members of the Committee, I appreciate this opportunity to present the views of the AFL-CIO on legislative changes we believe are necessary to both improve the operation of U.S. trade law and build the foundation of a new national policy that will begin to reverse America's precipitous decline in international trade.

The absence of a strong and predictable U.S. trade policy has contributed significantly to the sharp deterioration of the international economic position of the United States. Scores of domestic industries and millions of American workers have been left defenseless against an onslaught of imports spurred by foreign governmental practices and the vagaries of macro-economic policy. The consequences of this policy of neglect are being felt in all sectors of the economy through plant closings, bankruptcies, farm foreclosures and recessionary unemployment levels. The Maine shoemaker, the Ohio machinist, the Kansas farmer, and even the so-called high-tech worker in the Silicon Valley have all learned the lessons of international commerce--lessons learned not from textbooks or endless international negotiations, but from lost jobs, lost income, lost dignity and devastated communities in every part of the United States.

Workers know the United States is facing a national crisis because of international trade. They have known that for some time. Those workers welcome these hearings as congressional recognition of the seriousness of the problem. They applaud the Subcommittee's intention to proceed rapidly with comprehensive trade reform legislation--a determination which contrasts sharply with the Administration's program of business as usual.

In early 1986, as America was recording trade deficits that would have been unthinkable not too many years ago, President Reagan, in his annual Economic Report of the President, wrote: "Our international trade policy rests firmly on the foundation of free and open markets. The benefits of free trade are well known: it generates more jobs, a more productive use of a nation's resources, more rapid innovation, and high standards of living both for this nation and its trading partners." The Council of Economic Advisers, in the body of the report, elaborated on this theme, saying that job losses in the industrial sector were simply the result of improved efficiency and high wages, and that anyone who suggested otherwise has "an inadequate understanding of the benefits of trade."

For the millions of workers whose jobs were lost to imports or declining exports, this explanation provides little comfort. The shoeworker knows she is not overpaid at $6 an hour. The semiconductor worker knows he was efficient, but was still replaced by foreign production. With the Administration explanations, we have opened a sad new chapter in national policy of blame America first. The failures of government are papered over by blaming the victim.

Where are the free and open markets on which President Reagan bases his trade policy? Do they exist in Japan, the European Community, Brazil, Taiwan or Mexico? Are free and open markets compatible with quotas, stringent inspection requirements, discriminatory standards, export subsidies and incentives, industrial targeting programs, buy-national policies, export performance requirements, barter agreements and co-production requirements?

Where are the jobs this policy claims to generate? In March of this year, unemployment stood at 7.2 percent, which translates into 8.4 million Americans officially out of work and another 7 million either too discouraged to seek employment or forced to work part-time. The year 1985 was one of nine post-World War II years with an

unemployment rate above 7 percent, and five of those years were during the Reagan Administration.

The Department of Commerce estimated in January of this year that in 1984 alone 2.3 million jobs in manufacturing were displaced by trade, with a net loss of 1.1 million for the economy as a whole. In a study on displaced workers, the Bureau of Labor Statistics reported that between 1979 and 1984, 11.5 million workers lost their jobs to plant closure, slack work or layoffs. Twenty-five percent of those 11.5 million are still looking for work and 15 percent have left the labor force entirely.

The Administration believes that current trade policy generates a more productive use in this nation's resources and more rapid innovation. Is unemployment now productive? Does a highly skilled machinist contribute more to this nation's wealth in a retail store than he did making sophisticated machinery? How does innovation benefit the United States if new technology is licensed or sold to foreign concerns or the production of innovative goods is transferred overseas?

The Administration asserts that reliance on free trade principles results in higher standards of living both for this nation and its trading partners. The average weekly earnings for U.S. production/non-supervisory employees have declined more than 9 percent from 1977 to 1985 in constant dollars. The reduction of employment in the manufacturing sector and the growth of jobs in the service sector have no doubt contributed to this decline. Average weekly earnings for manufacturing workers in 1985 reached $386. For workers in finance, insurance and real estate, the average was $289. Workers in retail trade averaged $177, and employees in other types of service industries received $261. In the BLS study mentioned above, almost one-half of the displaced manufacturing workers who were fortunate enough to find alternative employment were forced to accept lower pay.

Family share of national income has also undergone a shift. For the period 1980 to 1984, the top 20 percent increased its share of national income by 1.3 percentage points while everyone else declined. Similarly, the benefits derived by other countries from U.S. reliance on free trade bear careful scrutiny. Who gains from the assembly of electronic components in less developed countries? Not the worker frequently paid subsistence wages in an unhealthy or dangerous work environment, and prohibited from organizing and bargaining collectively. In sum, even if one accepts the notion that free trade contributes to rising living standards, it is clear that any benefits are poorly distributed, and those who can least afford it bear the principal cost of this policy.

The mystical dream world of "free trade" where this Administration stands enchanted is a world that never was and never will be. I challenge anyone to name for me a single product, commodity or service, including money, that moves in commerce under conditions that Adam Smith or David Ricardo would have recognized as free trade, unlevered by state policy or intervention. My confidence in that challenge is reinforced by the knowledge--to which Administration officials are selectively oblivious--that much of this world disavows a market economy altogether. Even more of it practices the most brutal form of protectionism--the protection of mercantile power and profit at the expense of the rights of working people.

The growth of world trade did not reflect "open trading" so much as it represented directed trading in support of national development goals or the trade of multinational corporations which moved labor intensive production to low-wage countries or which were drawn into direct foreign investment in order to sell in foreign markets.

A widely shared perspective among our trading partners has been, in effect, "buy from the United States what you need in order to acquire the technology and essentials to develop your own economy and treat the large U.S. market as a stepping stone to economies of scale and 'international competitiveness'." "Open," "closed," "free trade," "protectionist," are all highly charged words that are not relevant in discussing

international trade today. There is a good deal of trade, but it is, with the exception of the United States, guided and regulated by national objectives.

The dimensions of the problem are startling. The U.S. merchandise trade deficit in 1985 was 3½ times higher than in 1980. For manufactured goods alone, America has gone from a surplus of $12 billion in 1980 to a deficit last year that reached $113 billion. During this period, exports fell 2.5 percent while imports of manufactured products shot up an astonishing 96 percent. In 1985, the import share of the U.S. market reached 50 percent for apparel, 23 percent for autos, 36 percent for machine tools, 25 percent for steel, and more than 75 percent for shoes. Deficits were experienced even in advanced products like semiconductors and telecommunications equipment.

In fact, the numbers have become so large, there is a tendency to become numbed by the enormity of the shift in U.S. trade patterns and to find hope in any light that might appear on the trade horizon. For example, in reporting on the release of February's trade numbers, the Journal of Commerce's front page headline read "U.S. Trade Deficit Shrinks." While lower than the deficits recorded in the previous few months, it still totaled $12.5 billion or $150 billion at an annual rate. Further, this "improving" deficit was 25 percent higher than what was recorded in February a year ago. The deficit for manufactured goods alone this February was $10 billion, or $120 billion on an annualized basis, higher than the record level reached in 1985.

Similarly, many are reassured that the U.S. trade problem will soon be history now that the dollar has begun to decline. What is frequently left unsaid is that the dollar remains some 40 percent higher against the currencies of our major trading partners than it was in 1980. In fact, the dollar has continued to appreciate somewhat against the currencies of Canada, Mexico and Brazil. Even if the dollar stabilized or continued to fall, a scenario that is by no means certain, its impact on the U.S. trade deficit would not necessarily be large. Over the past five years, U.S. bilateral trade deficits grew

substantially with countries like Taiwan and South Korea who tie their currencies to the United States. The U.S. bilateral trade deficit with Japan more than doubled even though the dollar had appreciated only marginally against the yen. Now that the dollar has fallen against the yen, there is similarly little assurance that this alone will reduce the U.S. deficit. In a recent article published in Japan's Ashi Shumbun newspaper, Japanese industry and government officials were quoted as saying that the change in the yen/dollar relationship would probably not affect Japanese exports significantly. As reasons, they cited Japan's export-oriented industrial structure and Japanese dominance in foreign markets which leave consumers little alternative. In addition, many U.S.-based multinational corporations which used to produce goods domestically now buy parts and half-finished products from Japan. On the import side, an official of the Ministry of Trade and Industry (MITI) noted that primary products make up almost 70 percent of Japan's imports and stated "nobody would want to eat more even if imported agricultural products become cheaper."

Changes in exchange rates will not by themselves provide the solution to America's trade crisis. Changes in trade law and policy are urgently needed to provide predictable relief to industries and workers injured by imports; to mandate governmental action when U.S. commerce is negatively affected by unreasonable or discriminatory practices of foreign governments; and to require countries that enjoy unwarranted trade surpluses with the United States and maintain barriers to U.S. goods to begin to reduce those excessive surpluses.

The economic realities make the work of this Subcommittee truly urgent. The AFL-CIO salutes much of the working draft you have developed. During my time today, I will only highlight some of our principal concerns, but I urge the Subcommittee to carefully review all of our proposals, which are attached. The AFL-CIO believes that any trade legislation should include:

-- trade law reform, providing more effective relief from injury by imports and protection from unfair trade practices;

-- protection from unwarranted trade surpluses with the United States;

-- effective labor rights provisions;

-- adequate safeguards in any new round of trade negotiations.

Injury Relief

The "escape clause" (Section 201 of the Trade Act of 1974) was designed to provide a safety valve for those industries threatened with or experiencing serious injury from imports. Of the more than 55 cases filed since this provision became part of law, only 12 have resulted in any relief. Even in these cases, the relief has never been enough to allow the injured industry to fully recover from the import assault. To improve the functioning of this provision, the standard used by the International Trade Commission (ITC) in finding injury should be changed to the international standard where imports must be a cause of serious injury or threat thereof. In the event of an affirmative finding of injury by the ITC, trade adjustment assistance should be automatically provided. We believe that while the U.S. Trade Representative (USTR) should retain the discretion to modify that recommendation, including the negotiation of Orderly Marketing Agreements, the USTR must be required to take action to provide equivalent relief. In addition, petitioners should have the option of requesting the establishment of an industry advisory group made up of representatives from business, labor and government to develop a plan to improve on industry's competitiveness. While the ITC should be required to take into account a group's plan in making its recommendation, the absence of a group or plan should not prejudice the ITC's decision.

Unfair Trade Practices

Section 301 provides the President with broad authority to take action against foreign countries whose practices burden, restrict or discriminate against U.S. commerce.

While we welcome recent decisions by the USTR to initiate actions against countries with unreasonable practices, the United States must go beyond what have been described as symbolic actions and vigorously pursue practices that are harmful to U.S. domestic interests.

We strongly support amendments contained in H.R. 1950 introduced by Congressmen Guarini and Duncan that would require action in response to foreign industrial targeting that causes or threatens to cause material injury. We must not allow domestic injury to fall victim to the coordinated and predatory practices of other countries.

Trade Deficit Reduction

Specific procedures should be adopted to provide certainty of response on the part of the U.S. government toward countries that maintain both excessive trade surpluses with the United States and unreasonable or discriminatory trade practices. Countries so identified would be required to gradually reduce their surplus with the United States by opening their markets to U.S. exports or reducing their own exports to this market. Failure to meet established goals would result in a series of escalating governmental responses.

Labor Rights

Section 301 should also be amended to define failure on the part of a country to take steps to meet international recognized labor rights as contained in Title V of the Trade Agreements Act of 1984 as an unreasonable act, policy or practice. Failure to take such steps would result in the denial of most-favored-nation treatment as long as that country remained out of compliance. We strongly believe that competitive advantage in trade should not be derived from the denial of the right to freedom of association, the refusal to insure a safe work environment, the exploitation of child labor or other such reprehensible practices.

New Trade Round Objectives and Authority

The AFL-CIO shares the reservations of many at home and abroad about the appropriateness of multilateral trade negotiations. Negotiations will not implement an effective national trade policy, correct the still overvalued dollar or reduce America's huge trade deficits. Nevertheless, if negotiations are to take place, attention should be directed at the following areas:

A major effort must be undertaken by national action and international negotiations to readjust currency values to more realistic levels and to bring some measure of stability to the exchange rate system. Such negotiations should be a precondition to any multilateral trade talks.

The inadequacies of General Agreement on Tariffs and Trade (GATT) safeguard procedures need to be addressed. The United States should concentrate on exposing trade restrictive measures and should develop procedures for negotiating agreements that would bring some order and stability to trade in import-sensitive products, as well as products and commodities where worldwide excess capacity exists.

Solutions to the serious problems faced by U.S. industry in the area of counterfeiting and intellectual property rights, such as computer programs, films and recordings, should be a U.S. objective.

With regard to problems in services, solutions must be found through national action and sectoral negotiations. The current emphasis on all-inclusive negotiations on trade in services is misplaced. The trade problems encountered by U.S. service industries are specific and quite diverse. Negotiations must be based on practical solutions for specific current problems so that the huge, diversified service industry will not be lumped together inappropriately in multilateral negotiations. U.S. law and practice establishing standards in the service sector must not be weakened.

Instead of broad negotiations on investment rights, emphasis should be placed on encouraging domestic investment. As with trade in services, regulations concerning investment flows should not necessarily be viewed as barriers. The United States must not negotiate away domestic employment for business access to foreign markets.

America needs to explore a more realistic general framework for coordinating world trade relationships in sectors characterized by global overcapacity and widespread import controls. The United States operates as if the trade-regulating measures of other countries do not exist or as if they were irrelevant in determining whether trade is likely to injure U.S. workers and industries.

The temporary and often ineffective U.S. regulation of imports has not accomplished its purpose; other countries have dealt more effectively with international trade to promote industrial development and employment. At least when there is widespread import injury, and when trade problems have led the major importing countries to apply import restraint, the United States should negotiate an effective multilateral framework for allowing sectoral trade to take place in a rational manner, while preserving our vital industrial base and jobs.

That covers the highlights of our proposals. We, of course, stand ready to discuss them with you in greater detail at any time.

We commend the Speaker for the high priority he has given trade legislation because speedy action on effective trade legislation is so vital to American workers and the nation.

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AFL-CIO SUGGESTIONS FOR TRADE REFORM LEGISLATION

1. Section 201

A. Change the standard for a finding of injury to the international standard where imports must be a cause of serious injury or threat thereof with the term "cause" defined as a cause which is important, even though other causes are of equal or greater importance.

B. Change domestic industry to include suppliers of materials, parts, components, or subassemblies incorporated in an article like or directly competitive with the imported article.

C. For domestic producers who import like or directly competitive articles, the ITC shall only consider the domestic production as the industry and shall not consider imports by domestic producers as a factor indicating the absence of serious injury or threat thereof to the industry.

D. With respect to serious injury amend factors considered by the ITC to read "the inability of a significant number for firms to operate domestic production facilities at a reasonable level of profit."

E. With respect to threat of serious injury, the following additional factors shall be used in an ITC determination: plant closings; increase in market share; foreign industrial targeting; and the extent to which diversion of exports to the U.S. market occurs because access to other markets is restricted.

F. With respect to relief options, the ITC should be able to recommend tariffs, quotas, domestic content, OMAs, to prevent or remedy injury, and adjustment assistance that would assist in remedying the injury.

G. If unfair trade practices are uncovered in the investigation, appropriate authorities must be required to initiate anti-dumping or countervailing duty actions.

H. If critical circumstances are found to exist, provisional relief measures can be put into effect pending a final determination.

I. In the event of an affirmative finding of injury by the ITC, USTR would be required to provide trade adjustment assistance. USTR would retain the discretion to modify the ITC's recommendation, including the negotiation of OMAs, in order to obtain equivalent relief. Failure on the part of USTR to provide equivalent relief by alternative actions within 6 months shall result in the implementation of the ITC recommendation.

J. Firms and workers should have the option of requesting the establishment of an industry advisory group to develop a plan to improve an industry's competitiveness. The absence of such a request shall not be a factor in any determination made under this section, but the ITC should be required to take into account a group's plan in making its recommendation.

II. Section 301

A. Industrial Targeting

1. Provide USTR with the authority to take action in response to industrial targeting that causes or threatens to cause material injury.

2. Remedies to include tariffs, import restrictions, orderly marketing agreement or other domestic measures.

3. In the event of an affirmative finding, USTR must take action to fully offset the material injury or threat from such injurious industrial targeting.

4. The best available evidence should be used in an investigation, with a preliminary decision required in 5 months and a final decision in 11 months.

5. In the event of a finding of injury, trade adjustment assistance must be provided.

B. Labor Rights

1. Amend Section 301 to define failure to take steps to meet internationally recognized labor rights as defined in Title V of 1984 as an unreasonable act, policy or practice.

2. Action under this provision may be commenced by either petition or by the USTR.

3. Upon commencement of an action, the USTR shall investigate or whether said country is failing to take such steps (11 months).

4. Affirmative decision by USTR shall result in the denial of most-favored-nation treatment as long as country remains out of compliance.

5. Findings by USTR shall be subject to judicial review.

6. All determinations shall be reviewed on an annual basis in order to determine if such country has taken any additional steps as required by the statute.

7. Failure by a country to take such additional steps shall result in denial of most-favored-nation treatment.

III. Trade Deficit Reduction

1. Procedures should be established to provide greater certainty of response on the part of the U.S. government toward countries that maintain both unwarranted trade surpluses with the United States and unreasonable and discriminatory trade practices.

2. An investigation period would be provided in order to determine which countries maintain both unreasonable and discriminatory trade practices as well as an unwarranted trade surplus with the United States. Such investigation would be based on the annual National Trade Estimates Report as required by the Congress in the Trade

Agreements Act of 1984. Unwarranted trade surpluses would be defined as a ratio of exports to the U.S. to imports from the U.S. of 175 percent (non-petroleum merchandise trade) or more.

3. Each country so identified would be required to reduce its 1985 surplus with the U.S. by 5 percent in calendar year 1986 and by 10 percent in each successive year until the U.S. trade deficit as a proportion of GNP is 1.5 percent or less, or such country's ratio falls below 175 percent.

4. Failure to achieve the deficit reduction goal in calendar year 1986 would subject said country to a series of escalating governmental responses.

IV. Section 232

Time limit for action is required including existing cases.

V. Section 122

A. Balance of payments disequilibrium is defined as a current account imbalance that exceeds one percent of GNP for 18 months.

B. The limitation on the level of the import surcharge should be removed and the time period extended to one year with provisions for further extension by legislation.

VI. Countervailing and Anti-dumping Duties

A. Criteria for determining injury should be expanded to include the existence of foreign industrial targeting and third country import restraints causing diversion to U.S.

B. In order to gain benefit of the injury test, a country must sign GATT subsidies code with compliance reviewed annually by U.S.

C. Natural resource subsidies should be actionable under countervailing duty laws.

D. In the event of a finding of injury, trade adjustment assistance must be provided.

VII. Transfer of Authority

Transfer the ultimate decisionmaking authority from the President to USTR for the Administration of Section 201, Section 301, Section 337, Section 406, and GSP.

VIII. Principal New Round Objectives

A. Greater transparency of safeguard action with procedures for negotiating OMAs.

B. Greater protection for intellectual property rights.

IX. New Round Authority

A. Non-tariff negotiating authority for 3 years.

B. Implementation authority tied to monetary conference and exchange rate stabilization.

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Chairman GIBBONS. Thank you, Mr. Kirkland.

Mr. Kirkland, in our discussions we are often told 70 to 80 percent of our trade deficit is caused by macroeconomic problems rather than by trade legislation itself. I don't know how you feel about this. I don't know whether that is your position or not.

In other words, the argument has been made that if we can get our budget deficit under control, we can get our currency properly aligned, that many of our trade problems will solve themselves.

That does not seem to square itself with your statement, as I understand it. Would you like to comment on that?

Mr. KIRKLAND. No one can deny there are microeconomic factors at work in the world as well as macroeconomic factors. I don't think it would be credible for anyone to say that any one given approach to a problem is the total solution. When we review the world as it exists and the practices that we see, it is difficult to believe that the generality of those practices which are in the nature of totally mercantilistic approaches by other countries to their management of their trade goals can be resolved by a balanced budget in this country.

I think the problems need to be addressed as they exist and in as specific terms as possible.

Chairman GIBBONS. I agree that in the past our U.S. trade legislation has not dealt with the subject matter of human rights or labor rights. It has to some extent in the Jackson-Vanik amendment, but generally speaking, it has been quiet on that subject, I guess believing it was such a sticky thicket that we weren't prepared to wade into it right now.

I see you say that the AFL-CIO believes any trade legislation should include effective labor right provisions. How far would you want to go at this stage?

Mr. KIRKLAND. Our specific aim, sir, is to incorporate a labor rights provision in any trade legislation. Congress has already enacted such provisions in the GSP and in the OPIC legislation and that offers, I think, a pretty clear precedent. We specifically would like to see legislation or language in this legislation that would bar most favored nation treatment from those countries that are in violation of basic internationally recognized minimum labor standards.

We have in place a long established institutional structure for defining those standards and criteria in the international labor organization, the one international body that also has procedures for assessing compliance through its committee on application of standards and through its governing body at the annual conferences.

Chairman GIBBONS. I haven't followed the—are we still a member of the ILO?

Mr. KIRKLAND. Yes, sir.

Chairman GIBBONS. Did we threaten to withdraw?

Mr. KIRKLAND. We withdrew for a period of 2 or 3 years and then reentered, sir.

Chairman GIBBONS. Mr. Crane?

Mr. CRANE. Thank you, Mr. Chairman.

I welcome Mr. Kirkland back before the committee. I want to also acknowledge his astute and very talented legislative director,

whom I have disagreed with probably more times than agreed with. He is nevertheless a great talent and a credit to your organization.

In your testimony, Mr. Kirkland, you indict many of these other countries for failure to practice free trade and you make reference specifically to Japan, the European Community, Brazil, Taiwan, and Mexico, and you raise the question, are our free and open markets compatible with targets, such as textile quotas here.

Is that what you had in mind?

Mr. KIRKLAND. Yes, sir.

Mr. CRANE. You also made reference to discriminatory standards which I have seen expressed by business. Would those discriminatory standards apply to such things as an article I referred to when Mr. Yeutter was before us, the Americanization of the Porsche 959? To Americanize that car would raise its cost from $150,000 to $300,000 in this market, so they decided not to go forward with that.

What has troubled me is the report that here in the United States we have added to the cost of an automobile through Government regulation, including those stupid CAFE standards, at least $1,000 a car. The tax component of that automobile, we heard testimony last year, was more than the cost of the steel of the car and it seems that we have done a lot to impose not only injury on American manufacturers and basically industries like that, but injury to consumers and injury to our ability to remain competitive.

Is that the kind of discriminatory standard that you had in mind?

Mr. KIRKLAND. No, sir. There is no question but that the Congress in its wisdom and with our strong support in many cases has adopted measures that require certain compliance with certain standards and a sharing of the burden of the cost of running the country that are compatible with the objectives of the American people.

I believe that whatever the social costs of those, and there are costs for every benefit certainly—no one can question that—our concern is that they be distributed fairly and that also an appropriate share be borne by those who seek access to the American market.

I think it is perfectly reasonable that this should be required.

Mr. CRANE. Can't that same argument be turned around with regard to requirements by other countries with respect to access of American-made products?

Mr. KIRKLAND. Certainly, and obligations to meet the pollution standards of another country by an American automobile coming into that country would not trouble me at all. It is discriminatory standards that are not exacted in the case of their domestic products that I object to.

Mr. CRANE. We discriminate in some areas and we consider that proper and we are prepared presumably to accept the social cost—I am not—in all of these areas the Food and Drug Administration, for example, has probably cost the lives of literally millions of Americans because of these protected delays in approving drugs for

consumption here and the fact of the matter is our standards are not compatible with international standards in most countries.

There is significant evidence that our pharmaceutical firms have produced lifesaving drugs that have been used for years before FDA has finally approved them for use here. This has hurt our competitive position, too, because our Government will not permit those drugs to be exported if they are manufactured here in the United States. The pharmaceutical firms go out of the United States, and manufacture through those firms that meet international standards—which are not as stringent as our own.

That is an instance of a discriminatory standard, it would seem to me, with regard to possible importation of foreign drugs into the United States.

Mr. KIRKLAND. There are cases of a conspicuous nature and notorious nature that rather argue somewhat to the contrary. The case of thalidomide was one.

Mr. CRANE. If you will yield for a moment, thalidomide was just about to be approved by FDA here before the revelations came out, not through FDA, but from other sources, that the thalidomide produced birth defects.

As I say, FDA had it under review and was on the threshold of approving thalidomide for consumption here. I don't think anyone wanted to produce a drug that would have those consequences.

Mr. KIRKLAND. Which would seem to suggest some caution in that process of approval.

Mr. CRANE. How about export subsidies and incentives? Would Eximbank qualify?

Mr. KIRKLAND. Certainly.

Mr. CRANE. How about buy national policies? How about the commercials "Made in the U.S.A.," or "Buy American" with regard to the auto industry a few years back?

Mr. KIRKLAND. I am all for it, sir.

Mr. CRANE. I agree, but you use these as examples to indict other countries for practices that we engage in here at home, too, and I am saying that there are instances where we have engaged in just this sort of thing.

Mr. KIRKLAND. I think you miss my point, sir.

Mr. CRANE. After you have indicted Japan and the European Community, Brazil, Taiwan, and Mexico, you ask the question: Are free and open markets compatible with quotas? Indicting them for their practice, stringent inspection requirements, discriminatory standards, export subsidies and incentives, targeting programs, buy national policies, et cetera.

The examples we just reviewed here were instances where we engage in the same practices.

Mr. KIRKLAND. That is correct, and I could cite some more where we deviate from free trade. My point, sir, is that there is no such thing and I cited these practices as being general, quite prevalent and more commonplace than to the contrary in the world at large.

Mr. CRANE. Except you went on, Mr. Kirkland, to say there is a good deal of trade, but it is, with the exception of the United States, guided and regulated by national objectives.

Mr. KIRKLAND. That is correct.

Mr. CRANE. How about voluntary restraints? Wasn't that a national objective of ours on the importation of Japanese cars?

Mr. KIRKLAND. We have on occasion done it but not in the systematic way that is generally practiced in the world at large.

Mr. CRANE. How about Mr. Bush over there talking to the Saudis right now?

Mr. KIRKLAND. This is precisely what I am urging, that we do undertake a systematic and comprehensive approach to the management of our national trade objectives just as prevails in the world at large.

Mr. CRANE. Then I misunderstood because I thought what you were arguing was that we try and get other nations to comply with what I would argue is substantially more free trade practice by the United States than our trading partners and the ideal——

Mr. KIRKLAND. My point is there is substantially, considerably more free trade practiced by the United States. Our markets are far more open than is the case in the world market at large and I am not arguing that there are not areas where we have deviated from that when it served a particular purpose and objective.

Mr. CRANE. Sir, do you favor that we pursue those practices? That is my point. I mean, are you arguing that in the best of all worlds all nations would practice free and fair trade or are you really arguing that what other countries have been doing historically is what we should emulate. That all of us should get into pursuit of these practices which I thought you were indicting such as those guided and regulated by national objectives—certain trading practices.

Mr. KIRKLAND. No, sir. I am arguing we should play the game that is on the field.

Mr. CRANE. So if another country or if most countries, for example, engage in restrictive trade practices, you would prefer that we simply emulated them or would you prefer they seek to change their policies to conform to our general practices?

Mr. KIRKLAND. I am arguing we should address these problems as they exist, that we play the game that is on the field and since the game is by and large managed systems of trade based on mercantilistic objectives, that is to say, national policies that are virtually universal by which nations seek to expand their exports and minimize their imports, that unless we are prepared to play by the same rules and by the same practices and observe and respond to the world as it is in fact rather than in the text book theory that we are going to be badly victimized as we have been.

Mr. CRANE. Let me turn to one other point in this same general vein but I think it extends beyond because it addresses something that has concerned me. I am talking about another aspect of the whole trade imbalance. That is our ability to remain competitive which is a complicated thing involving many aspects, such as capital formation, tax laws, deficits, value of the dollar, and so forth. For all of that, with the 35-percent increase in the value of the yen in the last 6 months, which has prompted Toyota to raise its prices quite substantially, Japanese imports still increased in the first quarter of this year by 10 percent.

The assessment was that it was because they had built up a reputation for quality of workmanship that enabled them to even take

the buffetting of several hundred other price disadvantage that they experienced. In the Washington Post recently they had an article on our dependence on Japan for parts in the space program that is worrying the Pentagon.

That is a $56 billion a year market according to the Electronics Industry Association. There is a quote here. " 'It is a matter of fact the Japanese have taken the technical lead in many of these key technologies', said Hewlett Packard Co.'s materials research laboratory director Robert Bermeister, who serves on the National Academy of Science Panel on Electronic Components."

It seems that a part of the problem is self-inflicted, in terms of our ability to remain competitive. Would you agree or disagree?

Mr. KIRKLAND. I would not disagree with that problem. Part of the problem is we have lagged behind in both the capacity to respond to changing market situations, research, and development. Certainly those are factors, but those are not the factors in my opinion that have led to a $50 billion annual trade deficit with Japan.

Mr. CRANE. If we go back to 1982 with the initiation of voluntary restraints and Detroit singing the blues. Then we heard from all of the heads of the major U.S. auto companies that they came in in 1983 with their biggest profit year in the history of the industry.

They came in in 1984 with an even bigger profit year than 1983. Management got some very generous bonuses for all of the good things they did up there in Detroit, in our free market, allegedly.

In short, they capitalized on voluntary restraints to maximize profits and made generous distributions of bonuses to management, but didn't pass those benefits on to the consumer. I think there is a great deal of blame to be shared by everybody and I would even argue you folks can absorb some in certain industries but I would blame management as much as I would attempt to fix blame on you. I would blame Government as a major component of this with some of the excessive regulation that you might approve of, some of those social costs, but I doubt you approve of all of them.

I don't see that we are entirely focused on cleaning up our own act as a component of a problem that is potentially going to reach $150 billion this year if we extrapolate from February's figures. Yet Under Secretary Smart and Ambassador Yeutter, both testified if we had totally free trade in the world that that would not alter that trade imbalance by more than $30 billion of that $130 billion and it might be as little as $15 billion. In short, what I am saying is there are many other ingredients to the problem, bad tax law, a lax attitude on the part of management, and the Government not properly evaluating the cost of some of the regulations that it puts on the auto industry.

For example, those fleet mileage standards—this is one that has stuck in my craw from its inception.

I have seen that this is a prodigious cost to automobile manufacturing. It was predicated on the assumption we have to save energy because we are running out of fossil fuels and that was totally untrue.

That was never true at the time. The evidence was abundantly available that that premise was false when they imposed those

standards and Congress would continue to push the auto industries right up to the 11th hour, hold their feet to the fire.

You remember that phrase. Then the auto industry said, hey, we are going to have to shut down if you want to continue to maintain those standards. Why maintain those stupid standards?

I credit Elizabeth Dole for having put a freeze on them last year and I hope she would do it this year and I hoped Congress would abolish those silly standards. That is a cost to the consumer. It has absolutely not one defensible argument behind it except "waste not, want not," which my grandmother used to tell me. On the other hand, the U.S. Geological Survey in 1975 recorded we had an estimated potential oil supply domestically of 185 years at those levels of consumption and they have revised those upward two or three times since. Why does Government continue to hamper the ability of American industry in so flagrant an area as that to remain competitive? Is that a defensible proposition? It seems eminently defensible to me that it should be repealed.

Mr. KIRKLAND. I respectfully would disagree with you, sir. I think the fleet mileage standards were a major factor in our ability to reduce our oil imports, and on the whole I think have served the people well.

Mr. CRANE. Now we are trying to increase those imports or raise the prices of that oil because of all of the horrifying things we have read about recently, such as banks failing.

Mr. KIRKLAND. I don't quite share your optimism. It is debatable, I concede, as to the long-term prospects of plentiful fossil fuels.

I think we have had one shock that had quite devastating consequences. It is not inconceivable that what has happened in the past could happen again.

Mr. CRANE. I concur with that, but with the plight, for example, in the States of Texas, Oklahoma, Louisiana, et cetera, where all these stripper wells are being closed down, hundreds of them, and the numbers of jobs lost is great, I would think you would lean more sympathetically toward my suggestion that we eliminate some of these standards and go ahead and consume the oil and gas.

If consumers want to pay the price, let them drive in comfort, in big, comfortable, American-made automobiles. That is my preference.

I was in the back seat of a Cadillac yesterday, and my head hit the ceiling. I used to associate Cadillacs with quality automobiles and comfort. I think we have been forced into some kinds of practices that are inconsistent with what the consumer wants, and the price of gasoline should be its determinant.

Mr. Kirkland, you are a delight to have with us at the committee, as always, and thank you for your testimony.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

Mr. Kirkland, I am sorry I wasn't here to hear you deliver your testimony, but I have had a chance to read it. I think it is excellent testimony and very helpful to the committee. I am especially pleased that you have called the attention of the committee, as I knew you would, to the victims of our current trade policy.

When you say that, between 1979 and 1984, 11.5 million workers have lost their jobs to plant closure, slack work or layoffs, you are

right on target. The appropriate followup is that 25 percent of those workers, 3 million people roughly, are still looking for work several years after they lost their jobs.

I was also interested in the Bureau of Labor Statistics studies which you mentioned in your testimony, about the difference between manufacturing jobs and what they pay, and service jobs, or retail jobs, and what they pay. Every month when the new figures come out, President Reagan says, well, everything is going along just fine. We have lost a few more thousand, 70,000 or 80,000 manufacturing jobs, but look at all the service jobs we have picked up.

The truth of the matter is, as you point out in your excellent testimony, that service jobs pay in many cases half of what is paid in manufacturing jobs; and that indeed some of those, it would be about 8 million Americans who lost their jobs between 1979 and 1984 and have been able to find other jobs, have found jobs, as you point out, at lower pay in the service sector.

I don't think this is what American citizens want. I don't think they want a leveling down of the American worker. There was a time 10 years ago, 20 years ago when Americans could look forward to higher wages and look forward to having their children earn higher wages yet. I think Americans still want to do that, and the trim in recent years is very disturbing from that point of view.

So, I commend you very much for your testimony. In particular, I would like to commend you for your support of my efforts to include repression of labor rights among unfair trade practices with which we ought to deal under section 301. Those two concerns are interrelated, by all means.

To the extent to which workers in Third World countries are forced to work because of repression of their rights of association, of collective bargaining, child labor laws and so on, forced to work for less than $1 an hour, inevitably we are going to be forced to lose our manufacturing jobs and forcing Americans to go to work at hamburger stands and video game arcades rather than on the assembly line.

So, this is a new concept. But, to the great credit of the AFL–CIO, you have been a supporter of that concept. I just wanted to thank you for that, for the excellent testimony you gave us a couple of weeks ago at the conference we had on that subject. And, hopefully, you will stand by us.

Mr. KIRKLAND. I would like to express my appreciation to you for your deep interest in this aspect of the problem and the work you have done on it. It has been extraordinarily beneficial and helpful.

Mr. PEASE. Thank you.

Now that we are agreed we are both fine fellows, I will thank the chairman.

Mr. KIRKLAND. We are both sincere, too.

Chairman GIBBONS. Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman.

Thank you, Mr. Kirkland, for your illuminating testimony.

I am looking at the addenda to your testimony and looking at Roman numeral IX, the implementation authority tied to a monetary conference and exchange rate stabilization. I wonder if you could amplify on that statement just a little bit?

You still believe that it is necessary to have a monetary conference, and the next phrase there leads me to believe there would have to be not only a conference but some kind of agreement before any authority would be granted.

Mr. KIRKLAND. That is right, sir.

Mr. FRENZEL. So, that means a conference itself wouldn't be satisfactory unless it reached some conclusion?

Mr. KIRKLAND. Our objective would be that, sir—I think it would require obviously international action to mitigate these extraordinary swings that are taking place so that we could get toward a more stable international currency system.

Mr. FRENZEL. Thank you very much.

Referring up two notches to Roman numeral VII, you, like the drafters of the legislation before the committee, have suggested transferring the decisionmaking authority from the President to USTR. It strikes some people who come before our panel as sort of an impotent suggestion.

The statement has been made that no USTR would make a ruling contrary to the person who appointed him or her or otherwise the USTR would be a short-lived phenomenon.

Is that an important objective of yours, or simply a subsidiary one?

Mr. KIRKLAND. I think it is an important one, sir. And there is no question that the observation that you made is true. No President is going to appoint a Special Trade Representative that markedly deviates from his views; yet, nevertheless, a President's views may vary depending upon the extent of the authority that is in the hands of the Special Trade Representative.

I am not in any sense partisan because this problem has existed under many administrations, Democratic and Republican, that the process of Presidential decisionmaking is one that involves an elaborate process of going around the horn through all the agencies that might in some way have an opinion, including the CEA, State, what-have-you, Treasury, everyone. And out of that process comes the President's opinion.

I would like—we would like to shorten that process and get it more specifically in the hands of the person who has the primary responsibility.

Mr. FRENZEL. Do you believe it would get you a different slant on these decisions?

Mr. KIRKLAND. I do, sir.

Mr. FRENZEL. Thank you very much.

I yield the balance of my time.

Chairman GIBBONS. All right.

Mr. Guarini.

Mr. GUARINI. Thank you very much, Mr. Kirkland.

It is interesting that the views of the Chairman of the Federal Reserve Board supersede the President's views on monetary matters; yet, the trade policy views, the views of USTR, do not. So, if macroeconomics is the biggest part of our trade problem, there seems to be an inconsistency of philosophy here.

I believe very strongly in depoliticizing the USTR, and I believe you do, too, because we use trade too often as a tool of foreign policy, and often it becomes very counterproductive.

You talked about treating others as others treat us. I imagine what you are referring to is reciprocity. Relatively speaking, we are much more an open and fair trade nation than other nations of the world. We certainly have a tilted field. At Bretton Woods we gave an advantage to all of our other allies after World War II. We pegged the gold to the dollar to their advantage. We instituted the Marshall Plan. No one can fault them, despite the questions asked by Mr. Crane and certainly there are many parts of the puzzle.

I was very disappointed to hear the USTR doesn't think that trade reform is vital and necessary. And I want to commend you on the position you have taken. We have now lost 3 or 4 million jobs last year. That means displacement of families. That means a loss of revenue to our Government and to our corporations. So, we do have a very, very serious problem facing us today.

For the first time since World War I, we are a debtor nation. I think all of us are very, very concerned about that, because the economic security of our Nation is determinative of whether our Nation remains a free nation that has a leadership role in the world.

I want to ask you a follow-up question.

Chairman GIBBONS. Could you pause there a minute and let me make an administrative announcement?

Mr. GUARINI. Certainly.

Chairman GIBBONS. Let me say to all those who are here that as soon as Mr. Guarini is finished, we will recess and then start again at 1:30. We must be finished by 4, so let's keep that in mind so we all can be guided by that. We will recess until 1:30.

Mr. Guarini, go ahead.

Mr. GUARINI. How can, in your opinion, Mr. Kirkland, labor and management and Government, in their future relationships with each other, work together as more of a team than in the past? Do you feel that labor representatives should sit on boards of corporations? Do you feel that there should be advisory committees? Do you feel there should be a national strategy in which the three tribes will participate with each other and determine where we are going as a nation?

Mr. KIRKLAND. Mr. Guarini, I served on a study group with Irving Shapiro of DuPont some time back in which we developed an approach to what has become known as industrial policy and has become the bugaboo of some.

Mr. GUARINI. Some people think that is a bad word. That is your policy.

Mr. KIRKLAND. No. It is a view I don't share. I heard Mr. Geiger express that view. I think it is, frankly, ultimately inevitable if we are going to address these problems in a realistic way.

Mr. Crane mentioned the fact that there are elements on our side of the fence that might suggest a need for change, and perhaps sacrifices in certain circumstances, and I want to assure you that our record demonstrates, rather clearly I think, that whenever circumstances of great national concern arose, we have been prepared to do our share. But no single element of our society acting alone can address that problem by its own unilateral actions or sacrifices.

Mr. GUARINI. Could there be any——

Mr. KIRKLAND. I know of no other way to do it and assure that everybody makes his contribution, whether in terms of addressing the problems that may exist that Mr. Crane referred to, or others, than to do it around the table in a way where everyone is assured that if he makes a contribution on behalf of those for whom he has the responsibility to speak that it will be matched by equivalent contributions from other sectors. And I would think this is particularly relevant in the case of trade issues.

When considering the prospect of relief or assistance through actions by those responsible for making these decisions on trade adjustment assistance or the imposition of restrictions on imports of one kind or another, or other measures, it might be prudent to condition them on some steps by the parties that are involved in the private sector.

That approach was followed, I think successfully, in the rescue of the Chrysler Corp. There was a table where everyone met, and everyone was assured that if they stepped back or made certain commitments that everybody would be on the same footing and would be prepared to make their contribution to the salvation of their situation. And I think it was a success.

I think this is a desirable and a worthwhile approach in dealing with the very critical industrial problems that we face, of which trade is a major factor.

Mr. GUARINI. Should there be any mechanism that should be established to assure all parties have a seat at the table?

Mr. KIRKLAND. I think the industry advisory group approach is a good one.

Mr. GUARINI. Should we have a reconstruction finance corporation instead of addressing every problem individually, like we did with Lockheed and Chrysler as you alluded to?

Mr. KIRKLAND. I don't think that would be incompatible. But they have to address specific problems in specific ways. But the availability of a tool like reconstruction finance corporation——

Mr. GUARINI. You favor it?

Mr. KIRKLAND. We would strongly favor it.

Mr. GUARINI. Does it trouble you that many of our corporations are taking their factories overseas? As we know, there are tax advantages.

Mr. KIRKLAND. That is one thing for us to talk about in any forum. If companies are going to have tax advantages and breaks and other accommodations, I think at least this country ought to have a right to expect that they make their investments in this country.

Mr. GUARINI. Does it trouble you that foreign corporations are buying a bigger and bigger piece of the United States and building factories here and earning money? That they are able to have that much more capital which they can take back home if they want to repatriate it, while they give American jobs in the long run, and having more at stake in the American political system?

Mr. KIRKLAND. Frankly, sir, the mere fact of investment by foreign firms in this country per se does not trouble me. The conduct of those firms does. Unfortunately in all too many cases they seem to be following a policy of imitating the practices of our worst domestic employers.

Mr. GUARINI. Thank you.

Mr. KIRKLAND. In terms of their relations with labor.

Mr. GUARINI. So it has not improved the situation as far as labor is concerned?

Mr. KIRKLAND. No.

Mr. GUARINI. But worsened it.

Mr. KIRKLAND. There are exceptions where they have dealt with us fairly and forthrightly and decently. On the other hand, there are many American corporations that have not—whose practices are not admirable in that regard.

Mr. GUARINI. There is no easy solution, is there?

Mr. KIRKLAND. I guess we wouldn't need a Congress if there were.

Mr. GUARINI. Nor would we need labor leaders.

Mr. KIRKLAND. That is right.

Mr. GUARINI. Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you.

Thank all of you. We will recess until 1:30.

[Whereupon, at 12:17 p.m., the subcommittee was recessed, to reconvene at 1:30 p.m.]

AFTERNOON SESSION

Chairman GIBBONS. Good afternoon, ladies and gentlemen, we now have an interesting panel composed of the Semiconductor Industry Association, Mr. Marshall; Coalition for International Trade Equity, Mr. Brennan; Computer and Communications Industry Association, Mr. Black; the Scientific Apparatus Makers Association, Mr. Sayer; and Corning Glass Works, Mr. Regan.

All of you, would you come forward.

Mr. Marshall, we will start with you. To all of you without objection, your entire statements will be placed in the record as if delivered and you just fire ahead. We will hear all of you and come back and discuss it with you.

STATEMENT OF C. TRAVIS MARSHALL, SENIOR VICE PRESIDENT, MOTOROLA, INC., REPRESENTING SEMICONDUCTOR INDUSTRY ASSOCIATION, ACCOMPANIED BY THOMAS HOWELL, COUNSEL

Mr. MARSHALL. Thank you, Mr. Chairman.

I am Travis Marshall, I am senior vice president of Motorola, the leading U.S. manufacturer of communications equipment and semiconductor products. I appear today on behalf of the Semiconductor Industry Association, an organization which represents producers of over 5 percent of all semiconductors manufactured in the United States.

My written testimony addresses antidumping, targeting, market access, and intellectual property rights. However, orally, I will concentrate on just the antidumping part.

When the current law was written in 1930 there was no semiconductor industry and only a very small electronics industry was in business. The U.S. antidumping statute does not contemplate foreign companies' repeated use of dumping as a strategy for gaining market share in the United States.

Yet, our experience has shown that since the late 1970's Japanese semiconductor manufacturers have dumped their product in the United States during every cyclical downturn in world semiconductor demand.

In the last 4 months, Japanese semiconductor companies have been found in three preliminary rulings by the International Trade Committee and the Department of Commerce, to be dumping semiconductors in the United States.

The consequences of this behavior have been severe.

Companies noted for their competency such as Mostek, Intel, National Semiconductor, or my own company Motorola, have been forced to leave the Dynamic RAM market or large portions of it.

Employment by U.S. semiconductor companies declined by 53,000 workers in 1985 alone, and financial losses by U.S. semiconductor companies have reached into the hundreds of millions of dollars.

This damage to the semiconductor industry should be seen as an extremely serious threat to the U.S. economy and U.S. industry competitiveness.

Semiconductors are the heart of the information age and an essential component in a growing range of other products and processes.

From its experience in dealing with the problem of unfair foreign trade practices, SIA has learned several lessons about U.S. trade law as it applies to market access abroad, and the dumping of semiconductors in the United States.

Most recently, U.S. trade law clearly does little to deter dumping, most importantly U.S. trade law clearly does little to deter dumping in our industry.

As a second matter there is no compensation for the U.S. semiconductor firms which have been injured by foreign dumping. It is essential that there be legislation in place at the earliest possible time to make clear to foreign corporate planners that they can no longer expect to dump their semiconductor products in the United States and must adjust their production plans accordingly.

Such legislation would complement the efforts of the administration to negotiate a settlement to the SIA 301 case.

To deter dumping effectively in the U.S. market, SIA supports legislation which would provide special sanctions for foreign companies found to have engaged in dumping on more than one occasion. For three-time offenders, sanctions should be still more severe. My written testimony will provide additional information on how these penalties for multiple violators of our antidumping law might be structured.

However, I would like to point out that the object of the legislation should be to stop scofflaws from dumping. This could take any form that would accomplish that goal.

We are all familiar with drivers' license laws that fine speeders for the first violation, the second time the speeder has a stiffer penalty, and the third time he losses his license in many States.

For the threat of losing his license, he carefully avoids moving violations from then on, and the scofflaw parking violator rarely parks in a tow-away zone.

The companies that have dumped electronic products in the United States six times in the past few years know our dumping

laws. There are six that have done this in the electronics industry with margins ranging to 188 percent. They are familiar with our laws and they have learned how to use them to their advantage.

I personally believe these companies would respect the penalty that would prohibit them from selling in the United States for a period of 1 year. That would be strong enough to prohibit it.

I believe they would never dump again.

That is the goal.

To provide compensation to injured U.S. companies, the Congress should create a right to financial damages enforceable in the Federal district courts for U.S. companies that have been injured by dumping. Our industry wants nothing more than to compete on a fair basis in all markets. We have the best overall semiconductor technology in the world, and we are committed to maintaining that technology through high levels of R&D, and capital investment.

What we ask of our Government is to create the environment in which we can sell our products in all world markets on a fair basis.

That opportunity must be provided if our industry is to continue as the world leader.

Mr. Chairman, I am very pleased to have had this opportunity to appear before you today to provide this committee with SIA's perspective on trade legislation.

Thank you.

Chairman GIBBONS. Fine, thank you, Mr. Marshall.

[The prepared statement follows:]

Testimony of

C. Travis Marshall

Senior Vice President and Motorola Director
of Government Relations

Motorola, Inc.

on behalf of

The Semiconductor Industry Association

Mr. Chairman, my name is Travis Marshall. I am Senior Vice President and Director of Government Relations of Motorola, Inc., a leading manufacturer of electronic equipment and semiconductors produced for both the United States and international markets. I appear today on behalf of the Semiconductor Industry Association, an organization which represents producers of over 95% of all semiconductors manufactured in the United States. I wish to thank you for this opportunity to appear before you and your Committee today.

I would like to divide my testimony into three sections. First, I will review the experience that American semiconductor manufacturers have had with the problem of foreign unfair trade practices. Second, I will describe the lessons we have learned from this experience. Third, I will suggest some ways in which the Congress can improve U.S. antidumping and other trade laws to better address the particular problems of high technology industries such as the semiconductor industry.

By way of introduction, let me say that when the current United States antidumping law was written in 1930, there was no semiconductor industry and there was only a very small electronics industry. Even for those electronics products which did exist -- radios and telephones primarily -- there was not a high degree of international competition or international trade. The United States was the clear

world leader in these products, and there was no perception that cartelized foreign producers would be likely to threaten the U.S. industry in this sector as they had in the chemical industry.

Since that time things have changed substantially. The development of the integrated circuit in the late 1950s brought with it the advent of rapidly evolving high technology products. To maintain a competitive position in these products, companies soon found it necessary to expend very large amounts of their revenues on research and development and the purchase of ever more sophisticated capital equipment. As a result, the semiconductor industry expends about 10% of every sales dollar on R&D -- the highest ratio of R&D to sales of any American industry.

The need to maintain a positive return on semiconductor products to fund this level of R&D makes the semiconductor industry particularly vulnerable to dumping. It has become possible for foreign producers to reduce revenues substantially in whole generations of key semiconductor products, thus depriving U.S. companies of the funds necessary for the new R&D and investment that is essential to their continued competitiveness.

Because this development could not have been anticipated in 1930, the U.S. antidumping statute does not contemplate foreign companies' repeated use of dumping as a central element of their strategy for penetrating the United States market. Yet, our experience has shown that since the

late 1970s Japanese semiconductor manufacturers have dumped their product in the United States during every cyclical downturn in world semiconductor demand. This dumping has contributed to driving major domestic companies completely out of the market and has caused others to abandon the product lines in which they were in direct competition with the dumped products. Once this occurs, it is extremely difficult for a company to reenter the product area it has left -- technological and capital barriers quickly become insurmountable.

In the last four months, Japanese semiconductor companies have been found in three preliminary rulings by the International Trade Commission and the Department of Commerce to be dumping semiconductors in the United States. The consequences of this behavior have been severe. Texas-based Mostek Corporation, which specialized in one of the affected types of semiconductors -- Dynamic Random Access Memories (DRAMs) -- in which Japanese dumping was most severe, was driven out of business altogether. Intel Corporation, National Semiconductor Corporation and my company, Motorola, Inc. have been forced to leave the DRAM market or large portions of it. Employment by United States semiconductor companies declined by 53,000 workers in 1985 alone, and financial losses by U.S. semiconductor companies have reached into the hundreds of millions of dollars.

This damage to the semiconductor industry should be seen as an extremely serious threat to the United States

economy and United States industrial competitiveness. Semiconductors are the heart of the Information Age and an essential component in a growing range of other products and processes. This gives the U.S. industry an importance far beyond that which would be expected given its absolute size -- about $10 billion in worldwide sales during 1985. The semiconductor industry is emerging as one of the truly basic industries of the United States in the sense that actions which affect it will exert a leveraged, or multiplied effect on a wide range of other industries and on U.S. national security.

SEMICONDUCTOR TRADE HISTORY

The Semiconductor Industry Association was formed in 1977 largely to address the emerging problems of international semiconductor trade; particularly the dumping of semiconductors in the United States market, and the lack of access for United States-based companies to the Japanese semiconductor market. To assist you in better understanding the nature of the problem and the solutions SIA believes are required, I will spend a few minutes discussing SIA's experience in international trade negotiations, agreements and formal trade cases with the Japanese government and Japanese semiconductor companies.

In the late 1960s and early 1970s, the Japanese government undertook a comprehensive program to establish a semiconductor industry in Japan. In the process, the Japanese government targeted this industry for a variety of promo-

tional policies. Because Japan possessed a significant consumer electronics industry as well as a growing information technologies sector, there existed in Japan sufficient demand to support a Japanese semiconductor industry.

The Japanese government negotiated the acquisition of semiconductor technology from U.S. companies, selected a group of Japanese companies to lead the nation's semiconductor development, and sponsored a series of industry-government research and development projects to upgrade the technological level of Japanese microelectronics. Second-rank companies were excluded from this process. During the "catch-up" period, U.S. semiconductor investment in Japan was restricted and the Japanese domestic market was protected by a system of import licenses and quotas. U.S. companies were able to sell those semiconductor products in Japan which Japanese companies did not yet make, but as Japanese companies developed a capability in any particular product area, U.S. firms' sales usually disappeared.

By the early 1970s, the United States and other foreign nations recognized that this Japanese program was inconsistent with the General Agreement on Tariffs and Trade. As part of a series of negotiations with the United States at that time, Japan agreed to drop its semiconductor quotas, investment restrictions, and import licensing procedures by January 1, 1976. But at the same time, the Japanese government instituted a series of "liberalization countermeasures" designed to offset the impact of liberalization. SIA has

described these countermeasures in detail before this committee in the past and they have been documented extensively in SIA's Section 301 case, so I will not go into them in this testimony. The important point is that the market structure created in part through these countermeasures has been and continues to be very successful in limiting U.S. access to the Japanese market.

Thus, while U.S. semiconductor firms have outsold their Japanese competitors in every other world market, they have been frozen at around a 10% market share in Japan. During 1985, despite the fact that U.S. companies hold the largest share of all other world market areas, U.S. share in Japan fell below 9%. SIA estimates that the financial losses to U.S. companies caused by this lack of market access amounted to approximately $1.7 billion last year in direct sales foregone.

Japanese government programs in support of the semiconductor industry had another, equally harmful effect. The programs encouraged Japanese companies to build excess semiconductor capacity:

1) Special low-interest loans (which were to be paid off only when and if the company made a profit on the product for which the loan was made) were made by the government to semiconductor companies.

2) These companies enjoyed a domestic market protected from foreign competition, which diminished their investment risks.

3) All of the companies selected by the Japanese government to enter the

semiconductor industry were also the largest manufacturers of other electronics products which make use of semiconductors.

As a result, there was a strong incentive for these companies to build as much capacity as possible with little regard for the projected growth of the semiconductor market.

When supply eventually exceeded demand, as it regularly does in virtually every product area in this industry, the Japanese companies had a tendency to continue to run their production facilities at full capacity and then to dispose of the product by selling it at dumped prices in foreign markets, particularly the United States. SIA and SIA member companies brought this fact to the attention of the U.S. government in 1981 and 1982, and the issue, along with the market access issue, was instrumental in the initiation of the U.S.-Japan High Technology Working Group negotiations concerning semiconductors.

It was SIA's expectation that the bilateral agreement which resulted from those negotiations in 1983 would prevent future dumping of semiconductors in the United States market and lead to a substantial increase in U.S. companies' access to the Japanese market. Unfortunately, the agreement resulted in no long term progress in either of these areas. For a short time during late 1983 and early 1984, the agreement appeared to be working, but this was a period during which worldwide semiconductor demand greatly exceeded available supply, and thus a time when prices were firm and Japa-

nese semiconductor users were purchasing from all suppliers without regard to nationality.

As soon as demand began to soften, semiconductor trade problems emerged in both the dumping and the market access areas. U.S. companies in Japan began to report major declines in their sales, and Japanese producers led a devastating decline in prices for the commodity semiconductor products in which they are particularly concentrated because of their government development programs. From late 1984 to the third quarter of 1985, the price of a 256K DRAM dropped from $22 to $2.25. Prices for 64K erasable programmable read only memories (EPROMs) also fell from $7.00 to $2.25 in one year. These drops were extraordinary, even in an industry accustomed to regular price declines.

In response to this situation, SIA felt that it had previously utilized all available options outside of U.S. trade law. We therefore made the decision to file a trade case under Section 301 of the Trade Act of 1974 with the Office of the United States Trade Representative. Our petition asked for the United States and Japanese governments to agree on 1) immediate steps to bring U.S. and Japanese sales opportunities for all semiconductor products into balance in the respective markets, and 2) the immediate prohibition of pricing below fair value in all world markets. An investigation into the allegations of this petition was initiated by U.S. Trade Representative Clayton Yeutter on July 11, 1985, and has provided SIA and the U.S. government the

opportunity once again to demonstrate the extent of the injury caused to the United States semiconductor industry by unfair and unreasonable Japanese government practices.

At the same time, individual U.S. semiconductor companies were coming under extreme pressure from the Japanese semiconductor dumping and chose to bring antidumping cases. The first case was filed on June 21, 1985 by Micron Technology Inc. (which is not an SIA member company) against 64K DRAMs from Japan. This was followed by a case filed on September 30, 1985 by Advanced Micro Devices, Intel Corporation and National Semiconductor Corporation against EPROMs from Japan. The Administration also recognized the serious threat which dumping is posing to the United States semiconductor industry, and on December 12, 1985 it self-initiated an antidumping case against 256K and above DRAMs from Japan.

These formal trade actions have brought our semiconductor trade problems to the forefront of U.S. international trade policy consideration, and have led to negotiations between the United States and Japan to resolve the dumping and market access issues. On the dumping side, preliminary determinations by the Department of Commerce and the International Trade Commission have demonstrated that the Japanese companies are engaged in some of the most severe dumping ever encountered in any industry. Preliminary dumping margins in these cases have ranged from 9.8% up to a high of an incredible 145% based on actual Japanese cost figures.

Margins for Japanese companies which did not respond to the Department of Commerce questionnaire were as high as 188%.

Much of the damage which U.S. firms have suffered is attributable to a small group of Japanese producers which have engaged in dumping repeatedly to take over large portions of the U.S. market for electronics products. I have attached to my written testimony a table which indicates that the same Japanese companies have been found to be dumping in up to six different products since 1970 in the electronics industry alone. Dumping by these companies occurred in the U.S. television industry in the 1970s. Many of the same Japanese companies were found to have dumped mobile radio products in 1984 and 1985 and high capacity pagers in 1982.

LESSONS SIA HAS LEARNED

From this experience in dealing with the problem of unfair foreign trade practices over a nine year period since its formation, SIA has learned several lessons about United States trade law as it applies to market access abroad and the dumping of semiconductors in the United States.

Most importantly, United States trade law clearly does little to deter dumping in our industry. Antidumping duties are a small price to pay for taking over the U.S. market in key product areas such as semiconductors. In the semiconductor cases, Japanese companies continued to dump after antidumping cases were initiated in 1985. Taking the rising value of the yen into account, Japanese companies' EPROM

prices continued to fall after the filing of the antidumping cases.

The United States cannot afford to give polite reprimands to antidumping violators and then take no additional action as they continue to dump, causing grave injury to a critical American industry. In industries, such as semiconductors, in which high levels of R&D must be maintained, the importance of having a deterrent effect in antidumping law is particularly great. When prices are artificially depressed by massive below-cost sales, U.S. companies are unable to recover their investment, and can be forced out of the running in future product generations. As I noted in my introductory remarks, this has already occurred in DRAMs. There is a real danger that it could also happen in EPROMs. These two product areas account for 20-25% of total semiconductor consumption, and, as the highest volume semiconductors are key "technology driver" products.

In the long term, moreover, the injury to the U.S. economy can extend far beyond the U.S. manufacturers who suffer severe operating and employment losses. Once U.S. producers have been forced out of a product area, prices of the product in question often increase to levels higher than prevailed before the advent of dumping, thus imposing a cost on U.S. companies now reliant on foreign sources of the product.

For instance, Japanese price leadership drove 64K DRAM prices as low as 50¢ in the spring of 1985 and Mostek,

Motorola and Intel were forced to halt production of that product due to severe operating losses. Now Japanese producers are the dominant remaining competitors and prices have risen all the way to the $1 level.

Unfortunately, under current law, dumping cases not only do little to deter dumping; they are also an inadequate tool to halt semiconductor dumping. A dumping case takes 6-8 months from identification of a potential dumping problem to the date of filing, and even after a case is filed, duties are unlikely to be imposed for another year. During this period, dumping continues, so that by the time the first duties are imposed, the U.S. industry has already been severely injured or even destroyed. This means that the best hope for the semiconductor industry is to develop an effective deterrent to dumping.

As a second matter, once damage has been done to U.S. semiconductor firms by foreign dumping there is no compensation for the U.S. firms which have been injured by this unfair trade practice. Antidumping duties are simply paid to the U.S. Treasury, so that even if duties are imposed, the competitiveness of the U.S. companies remains impaired. This is one of the primary reasons that U.S. semiconductor companies have not made broader use of the antidumping law.

Third, with regard to access to foreign markets, SIA has found that, while Section 301 has proven to be a relatively flexible tool for seeking greater access to the Japanese semiconductor market, there are elements of the statute

which require some clarification. In particular, during the course of the investigation of our 301 case some doubt arose within the Administration as to whether the statute applies to the toleration of anticompetitive cartels or to past government practices which have a current, ongoing effect. In addition, the application of Section 301 to the general problems of foreign government targeting could be made more explicit and less discretionary.

SIA hopes that any agreement which might be reached in the U.S.-Japan negotiations to resolve the SIA Section 301 case will address all the issues I have outlined. Such an agreement -- if reached -- will probably last for only a limited period, however. This will not be adequate to bring long term Japanese plans for the creation of new semiconductor capacity under the influence of market forces. Therefore, it will not deter dumping once the agreement runs out of force. It is essential that there be legislation in place at the earliest possible time to make clear to Japanese semiconductor companies that they can no longer expect to dump their semiconductor products in the United States and must adjust their production plans accordingly.

SIA'S PROPOSED LEGISLATIVE RESPONSES

To address these issues, SIA has developed three proposed trade law reforms: one to deter dumping, one to provide for compensation for injury caused by dumping, and one to clarify the application of Section 301.

To deter dumping effectively in the United States market, SIA supports legislation which would provide special sanctions for foreign companies found to have engaged in dumping on more than one occasion. The second time a company is found to be dumping, we believe the Secretary of Commerce should begin monitoring its products, and commence an antidumping investigation if monitoring reveals the presence of dumping. Second offenses might also automatically trigger a Department of Commerce finding that critical circumstances exist and therefore the requirement that duties be assessed retroactively ninety days prior to the preliminary antidumping determination. SIA would support the doubling of duty payments for second offenders. The third time a company is found to be dumping, stronger penalties should be imposed in addition to those levied for second offenses. The penalty should be sufficiently stringent to deter repeat offenses. These stronger penalties might include an order prohibiting the import of products made by the foreign company.

To the extent necessary, the U.S. government should negotiate to make GATT-legal increased duties for multiple offenders and application of the duties from the date the case was filed. However, due to the severity of the dumping problems we face, remedies must be implemented in a timely and effective manner.

To provide compensation to injured U.S. companies, SIA believes the Congress should create a right to financial

damages enforceable in the federal district courts for U.S. companies that have been injured by foreign dumping. Damages could be collected by any of the ordinary means available to the district courts.

In addition, U.S. companies should be able to petition the U.S. government for compensation to be provided from a fund consisting of the proceeds of antidumping duties levied on the producers' products.

With regard to market access, SIA supports revisions to Section 301 of the Trade Act of 1974 to make two clarifying points. Congress should make explicit its original intention in enacting Section 301 that foreign government toleration of anticompetitive activities which impose a burden on United States commerce is actionable under Section 301. This was originally a part of the statutory predecessors of Section 301; Section 252 of the Trade Expansion Act of 1962, and should once again be spelled out explicitly in the law. Congress should also make clear that Section 301 applies to past foreign government actions which have a current injurious effect on United States companies. In addition, we support legislation explicitly allowing the President to address foreign industrial targeting.

OTHER ISSUES

As a final note, Mr. Chairman let me turn to the question of revisions to U.S. intellectual property law as it is applied to international trade. SIA commends you and this Committee for your efforts to revise Section 337 of the

Tariff Act of 1930 to ensure that intellectual property rights of United States companies are respected by their foreign competitors. Unfortunately, the language developed in this area for your omnibus trade bill does not include mask work rights, the type of intellectual property right most important to our industry.

This new form of intellectual property right was created by the Congress in the Semiconductor Chip Protection Act of 1984, and has been in effect since January of 1985. This legislation specifically provided for enforcement of mask work rights under Section 337. Japan has enacted similar legislation, and many other nations are in the process of providing intellectual property protection for semiconductor designs.

As the most recently created form of intellectual property protection, mask work protection does not always come immediately to mind when discussing intellectual property issues. We would hope, however, that it can be included in your legislation as it is considered by your Committee. We see no reason mask work rights should not be covered by your Section 337 amendments.

Mr. Chairman, I am very pleased to have had this opportunity to appear before you today to provide this Committee with SIA's perspective on trade legislation. I would also like to compliment you and this Committee for your attention to these issues of great importance to the United States. For the semiconductor industry, your timing could not be

better. It is time for this country to take affirmative action to halt unfair foreign trade practices.

Our industry wants nothing more than to compete on a fair basis in all markets. We have the best overall semiconductor technology in the world. We are committed to maintaining that technology through high levels of R&D and capital investment. What we ask of our government is to create the environment in which we can market our products in all world markets on a fair basis. That opportunity must be provided for our industry to continue as the world semiconductor leader.

DUMPING MARGINS BY COMPANY AND PRODUCT

CASE	Matsushita	NEC	Kokusai	Oki	Hitachi	Toshiba	Mitsubishi	Fujitsu	Sanyo	Sharp
Large Power Transformers (1970)					21.40	51.37				
Televisions (1971)	74.02 Color (55.16) BW				58.42 (43.36)	32.34 (38.78)	52.73 (81.72)		76.03 (64.90)	61.80 (66.72)
High Power Amplifier Assembly & Parts (two types) (1981)		25.4 41.4 41.4 (Parts)								
High Capacity Pagers (tone only) (1982)	109.06	70.35								
Cellsite Radio Apparatus Transceivers & Subassemblies (1983)			59.94							
Cellular Mobile Telephone (1984)	106.60	95.57	57.81	9.72	2.99	0	87.83	57.81		
64K DRAM (1985) [1/]	38.80	8.93		12.52	18.99	38.80	94.00	38.80		
EPROM (1985) [1/]	63.10	188.0		63.10	29.90	21.70	63.10	145.90		
256K DRAM (1985) [1/]	39.68	108.72		39.68	19.80	49.50	108.72 [2/]	74.35		

FOOTNOTES

1. Margins are preliminary.
2. Based on best information available.

REVISED 3-14-86

Chairman GIBBONS. We will go next to the Coalition for International Trade Equity, Mr. Brennan.

STATEMENT OF RICHARD M. BRENNAN, EXECUTIVE DIRECTOR, COALITION FOR INTERNATIONAL TRADE EQUITY

Mr. BRENNAN. Thank you, Mr. Chairman. I am Richard Brennan, president and executive director of the Coalition for International Trade Equity, known as CITE.

CITE is primarily concerned with international market distortions caused by the policies and practices of foreign governments such as industrial targeting.

Mr. Chairman, I would like to emphasize our concerns with targeting by way of an analogy. You remember the flying wedge in football, 10 blockers formed a V-shaped wedge in front of the kick runner. It was outlawed. Too many of the opposing team were being injured.

Well, the flying wedge has returned. This time in the international trade arena. We call it foreign industrial targeting. We think it should be outlawed again. It is injuring a lot of American manufacturers.

Foreign industrial targeting and the flying wedge have a great deal in common. They are both effective because they are based on coordinated combined efforts. Further, they both rely on combined effects to function over time.

The existence of targeting is well documented. The most sensitive documentation was undertaken not by the private sector but by the U.S. Government itself, namely the International Trade Commission.

The ITC spent almost 2 years documenting in detail targeting practices in Japan, Great Britain, West Germany, Italy, France, Brazil, Korea, Taiwan, Mexico, and Canada. In mid-1985 USTR and the Departments of Labor and Commerce developed additional documentation of foreign targeting. The USTR found that current U.S. law was inadequate in at least six significant areas. We will refer to some of these findings later in our testimony.

Last month, sir, you circulated a discussion draft of trade proposals. CITE was pleased to see that this draft included modification to section 301 which would specifically address the industrial targeting practices of other nations.

In your proposal a mandatory response to targeting would be required in those cases where the practices nullify or impair any U.S. trade agreement benefit.

That is, those practices that section 301 defined as unjustifiable.

On the other hand, it probably would leave the President discretion to retaliate where the targeting practices do not violate U.S. rights, that is under those circumstances defined in section 301 as unreasonable.

At first glance, this distinction appears to be a logical one. However, CITE strongly believes it should not be made when attempting to respond to the combination of market distorting practices in a targeting case.

Let me return to the flying wedge analogy to explain why CITE believes there should be a mandatory response to all parts of the targeting program.

For the sale of illustration, let's assume the point man of the flying wedge and three of the other blockers make legal blocks while all others make illegal blocks. Under those circumstances as we turn the analogy back to targeting, the United States would be required to retaliate against the illegal practices, yet it would not respond to the legal practices.

By not responding to those key legal practices which of course contribute to the success of the overall program, we have really lost our ability to respond properly to industrial targeting.

Let me be more specific, under this analogy, the following would all be considered practices which do not violate U.S. rights. GATT legal home protection for example, for an industry. Discriminatory government procurement practices not covered by the code. Government-condoned anticompetitive behavior such as cartels.

Yet, it is quite clear that these practices unto themselves could result in significant market distortions.

When they are combined with illegal practices such as subsidization, export incentives, we are facing the most formidable flying wedge of competition, a Government-created flying wedge.

The analogy is of course contrived. The facts, however, are not.

The targeting practices cited as GATT legal and not currently covered by U.S. law were taken directly from the study submitted to this committee by the USTR in July 1985.

In the Trade Act of 1984, the Congress went so far as to define statutorily the terms unjustifiable, unreasonable and discriminatory.

From our reading of those definitions, it is a commonsense approach. These definitions cut through all the legal niceties and nuances and simply seem to say when all is said and done, the act's policies and practices of our Nation burden or restrict U.S. commerce to such an extent we will no longer tolerate such discriminatory practices.

CITE urges that targeting practices be dealt with in their totality under 301. The flying wedge was used because the whole overall effect was greater than the sum of its parts, so too with targeting.

There are beneficial multiplier effects that accrue to an industry selected by its government to become a dominant international competitor. The Japanese semiconductor industry is a prime example.

Most of our trade laws and our thinking are essentially directed at responding to individual acts or transgressions, subsidies, dumping, et cetera; in industrial targeting cases we must respond to the overall effect of combination of market distorting practices.

In dealing with the flying wedge we cannot declare only a few of the blockers illegal nor can we take such a select approach in targeting cases.

Accordingly, CITE recommends that foreign industrial targeting be denied as unfair trade practice under 301. We also recommend that an illustrative list of targeting practices be included in the final legislative language. H.R. 1950 introduced by Mr. Guarini and

Duncan and H.R. 2607 introduced by Mr. Donnelly take such an approach.

Finally, CITE recommends the USTR be the final decisionmaker, that U.S. response be mandatory in all cases where it has been demonstrated that another nation has engaged in targeting practices.

CITE supports giving the USTR a range of options in this regard.

To an American businessman foreign industrial targeting practices represent a very serious breakdown in the international trading system. American manufacturers are not in competition with a foreign enterprise but rather are competing with combined resources of a foreign government.

In such an uncertain situation, American manufacturers become less willing to take future risks by investing in R&D and new plant and equipment in this country.

This is particularly true when American companies perceive that their Government is unwilling to respond to the market distorting practices of other governments. Thus targeting is undermining one of the key elements of the American private enterprise system with serious long-term ramifications for our Nation.

This is why we so strongly recommend a mandatory response to targeting.

The current trend in international trade is toward mercantilism, not open trade. The major causes of this trend are the actions of governments. The changes to section 301 which CITE advocates would represent a significant step toward eliminating these market distorting practices of other governments.

Mr. Chairman, I appreciate the opportunity to appear before you on behalf of CITE.

Chairman GIBBONS. Thank you, Mr. Brennan.

[The prepared statement follows:]

RICHARD M. BRENNAN'S
ORAL STATEMENT
APRIL 8, 1986
HOUSE WAYS AND MEANS TRADE HEARINGS

COALITION FOR INTERNATIONAL TRADE EQUITY

Mr. Chairman, I am Richard M. Brennan, President and Executive Director of the Coalition for International Trade Equity (also known as CITE). CITE was formed in 1983 by a group of outstanding high tech companies concerned with the deterioration of the international trading system. In particular, CITE is concerned with international market distortions caused by the policies and practices of foreign governments, such as foreign industrial targeting. A list of CITE's member companies is included in our full statement.

Mr. Chairman, I would like to emphasize our concerns with targeting by way of an analogy:

Do you remember the "flying wedge" in football? Ten blockers formed a V-shaped wedge in front of the kick-returner. It was outlawed -- too many of the opposing team were being injured.

Well, the flying wedge has returned -- this time in the international trade arena. We call it foreign industrial targeting. We think it should be outlawed again -- it's injuring a lot of American manufacturers.

Foreign industrial targeting and the flying wedge have a great deal in common. They are both effective because they are based on coordinated, combined efforts. Further, they both require their combined efforts to function together over time.

It is this extended coordination and combination of efforts which run over or past our U.S. trade laws. Our laws are designed to respond to individual infractions, such as dumping or subsidization. However, when another nation uses a combination of trade distorting practices, our line of defense is full of holes.

Let's look at some facts. At one time, there were many in the U.S. government who did not believe that foreign industrial targeting even existed. We are well beyond that stage now. The existence of targeting is well-documented.

The most extensive documentation was undertaken, not by the private sector, but by the U.S. government itself; namely, by the International Trade Commission (ITC). The ITC developed the following useful definition of targeting:

"Industrial targeting means coordinated government actions taken to direct productive resources to help domestic producers in selected industries become more competitive."

The ITC spent almost two year documenting in detail targeting practices in Japan, Great Britain, West Germany, France, Italy, Korea, Brazil, Taiwan, Mexico, and Canada. CITE's detailed submission to this Committee includes a summary of the actual targeting practices used by these nations to enhance the competitiveness of specific industries.

In mid-1985, USTR and the Departments of Labor and Commerce submitted to the Congress additional detailed documentation of foreign industrial targeting practices. These studies reviewed the effectiveness of current U.S. trade laws to respond to targeting. The USTR study found that current U.S. law was inadequate in at least six significant areas. We will refer to some of these findings later in our testimony; a more detailed commentary on this USTR analysis is included in our full statement.

Last month, Chairman Gibbons circulated a "Discussion Draft of Trade Proposals". CITE was pleased to see that this draft included modifications to Section 301 which would specifically address industrial targeting practices of other nations. CITE has consistently fostered using Section 301 to remedy international market distortions caused by foreign industrial targeting. Section 301 provides the breadth of definition to deal with the myriad of targeting practices used by other nations while providing flexibility in selecting a U.S. response.

In the Chairman's draft proposal, a mandatory response to targeting would be required in those cases where the practice nullifies or impairs any U.S. trade agreement benefits; that is, those practices that Section 301 defines as "unjustifiable". On the other hand, the proposal would leave the President discretion to retaliate where the discriminatory practices do <u>not</u> violate U.S. rights; that is, under those circumstances defined in Section 301 as "unreasonable".

At first glance, this distinction appears to be a logical one. However, it is a distinction which CITE strongly believes should not be made when attempting to respond to the combination of market distorting practices associated with a foreign industrial targeting case.

Let me return to the flying wedge analogy to explain why CITE believes there should be a mandatory response whether the practices are considered "unjustifiable" or "unreasonable" under Section 301.

As stated earlier, the flying wedge and foreign industrial targeting are both effective because they are based on coordinated, combined efforts over time.

For the sake of illustration, let's assume that the point-man of the flying wedge and three of the other blockers make legal blocks, while all of the others make illegal blocks.

Under those circumstances, as we turn the analogy back to targeting, the U.S. would be required to retaliate against the illegal practices, yet it might not respond to the legal practices.

By taking such a piecemeal/selective approach, we could well miss responding to those key practices which constitute the essence and success of the combined/coordinated practices of targeting.

Let me be more specific. Under this analogy, the following would all be considered practices which do not violate U.S. rights: GATT-legal home market protection, discriminatory government procurement practices not covered by the Government Procurement Code and government-condoned anti-competitive behavior. Yet, it is quite clear that these practices unto themselves could result in significant market distortions. When they are combined with "illegal" practices, such as subsidization, export incentives, etc, we are facing a most formidable flying wedge of competition -- a government-created flying wedge.

The analogy is, of course, contrived. The facts, however, are not. In the above analogy, the targeting practices cited as GATT-legal and not currently covered by U.S. laws, were examples of the deficiencies in our laws taken directly from the study submitted to this Committee by the USTR in July 1985.

Since the essence of the success in targeting is a combination of market distorting practices, CITE believes it is self-defeating to make a distinction between targeting practices which violate U.S. trading rights and those that do not -- or in the parlance of Section 301, distinguishing between "unjustifiable" and "unreasonable" targeting practices.

In the Trade Act of 1984, the Congress, in order to further clarify its intent, went so far as to define statutorily the terms "unjustifiable, unreasonable, and discriminatory." From our reading of these definitions, it is a common sense approach. These definition cut through all the legal niceties and nuances and simply say, "when all is said and done, the acts, policies, and practices of your nation burden or restrict U.S. commerce

and we will no longer tolerate such discriminatory practices." In taking such an approach, it strikes us that the Congress must have had problems, such as industrial targeting, in mind.

CITE urges that foreign industrial targeting practices be dealt with in their totality under Section 301. The flying wedge was used because the whole, overall effect was greater than the sum of its parts. So too with targeting -- there are beneficial "multiplier effects" that accrue to a foreign industry which has been selected by its government to become a dominant international competitor. The Japanese semiconductor industry is a prime example.

Most of our trade laws and our thinking are essentially directed at responding to individual acts or transgressions -- subsidies, dumping, etc. In industrial targeting cases, we must respond to the overall effects of the combination of market distorting practices. In dealing with the flying wedge, you can not declare only a few of the blockers illegal; nor can we be so selective in targeting cases.

Accordingly, CITE recommends that foreign industrial targeting be defined as an unfair trade practice under Section 301. CITE also recommends that an illustrative list of targeting practices which would be deemed unjustifiable, unreasonable or discriminatory and which burden or restrict U.S. commerce be included in the final legislative language. HR 1950, introduced by Messrs. Guarini and Duncan, and HR 2607, introduced by Mr. Donnelly, take such as approach.

Finally, CITE recommends that the USTR be the final decision-maker and that the U.S. response be mandatory in all cases where it has been demonstrated that another nation has engaged in foreign industrial targeting practices. CITE supports giving the USTR a range of options.

To an American businessman, foreign industrial targeting practices represent the most serious breakdown in the international trading system. American manufacturers find they are not in competition with a foreign enterprise, but are actually competing with the resources of a foreign government. In such an uncertain situation, American manufacturers become less willing to take risks and invest in R&D and plant and equipment. This is particularly true when American companies perceive that their government is unwilling to respond to the market distorting practices of other governments. Thus, targeting is undermining one of the key elements of the American private enterprise system with serious long-term negative ramifications for our nation. This is why CITE so strongly recommends a mandatory response to targeting.

The current trend in international trade is toward mercantilism, not open trade. The major cause of this trend is the actions of governments.

As the economic and political leader of the free world, and with one of the largest markets in the world, the U.S. must exercise its leadership by demonstrating that it will no longer tolerate market distortions caused by unfair trading practices of other governments.

The first step in achieving this objective is to change our trade laws so that the American response to such unfair trade practices is swift and effective.

It is essential that other nations realize the gravity of our resolve through tougher U.S. trade law enforcement.

The changes to Section 301 which CITE advocates would represent a significant move toward eliminating these market distorting practices of other governments.

THANK YOU.

COALITION FOR
INTERNATIONAL
TRADE
EQUITY

February 4, 1986

THE NEED FOR
SUBSTANTIVE TRADE LAW REFORM

THE ISSUE: International Market Distortions Caused by Governments

SUMMARY: Major international market distortions are becoming commonplace because of the direct intervention of foreign governments. These are not random interventions; they have been evolving and increasing over the last several decades.

Governmental intervention has become an integral part of other nations' economic policies. This trend of nationalistic mercantilism poses the greatest threat to reestablishing an open trading system; it will persist beyond currency alignment and budget deficit problems.

This trend can be reversed. However, this reversal requires US leadership and determination to reestablish an open international trading system.

An essential first step is for the US to demonstrate, by its actions, that it will no longer tolerate international market distortions caused by the unfair trading practices of other nations.

In order to achieve this, we must make major and substantive changes to our trade laws to provide the US with the legislative and administrative tools to move swiftly and effectively against unfair practices.

Based on recent detailed analyses completed by the ITC and the USTR, our current laws are not adequate in combating many key market distorting practices of other nations.

An additional benefit to major trade law reform would be a restoration of a sense of certainty to American industry that their government can, and will, defend them against these unfair practices.

CITE's key recommendation to achieve these goals is embodied in proposed changes to Section 301 of the 1974 Trade Act by defining foreign industrial targeting as an unfair trade practice, reducing Presidential discretion, and making mandatory (with proper flexibility) an American response when there is an affirmative finding of injury in a targeting case.

The Issue:

INTERNATIONAL MARKET DISTORTIONS CAUSED BY GOVERNMENTS and THE NEED FOR SUBSTANTIVE TRADE LAW REFORM.

Basis of US Law:

A basic axiom of US trade law is that international trade flows should be governed by natural comparative advantage as determined by market forces. This is also one of the basic tenets of GATT. Stated another way, both US trade law and the GATT envisioned an international trading system based on an equivalence of competitive opportunity among enterprises and in which enterprises compete with one another; the actions of government should neither help nor hinder their respective competitive positions in international trade.

These are sound economic principles. Principles designed to serve all nations well over the longer term; which indeed they did for many years.

Current International Realities:

Today however, the international trading regimen has seriously deteriorated. "The trading rules set under the GATT are increasingly ignored or evaded." This was one of the conclusions of the Dunkel Commission in its report to the GATT Director General in March 1985.

This deterioration can be directly related to the willful acts of governments. Very few trade-distorting practices are caused by corporations -- dumping, patent infringement, and some isolated cases of antitrust violations. Thus, the flaunting of GATT rules is not a series of random coincidences; it represents the cumulative acts of governments to achieve their specific national goals.

Each nation-state has a sovereign right to establish whatever social and economic policies and programs it believes are necessary for the internal workings of its nation. However, when they deal in international commerce, they take on an additional responsibility; one, that to a certain extent, diminishes their sovereign right to act only in their own national interest.

It is this latter responsibility which is currently being ignored or evaded in international trade today. The ability of governments to devise unfair trade practices to protect or foster their industries appears boundless.

New Market Distorting Practices:

One of the most elusive unfair trade practices to deal with under current US trade laws (and the GATT rules) is industrial targeting. The International Trade Commission (ITC), in its extensive analysis of industrial targeting practices of other nations, developed the following useful definition:

> "Industrial targeting means coordinated government actions taken to direct productive resources to help domestic producers in selected industries become more competitive."

That industrial targeting practices exist, has been well-documented. The most extensive and thorough analysis to date has been done by the ITC. Their three-volume study covered targeting practices in Japan, European Community countries, Korea, Brazil, Taiwan, Mexico and Canada. The USTR and other US government agencies have also analyzed industrial targeting practices of other nations.

Industrial targeting exists; it is oftentimes both protectionist and predatory; it represents a significant combination of unfair trade practices which result in market distortions.

The practice of industrial targeting has evolved over several decades. In retrospect, the techniques used by Japan to enhance the competitiveness of its steel industry, starting in the 1950s, was a form of targeting -- we simply didn't call it that.

Targeting is a "new" practice in that it adds the element of goal-oriented government coordination. The end results are major international market distortions well beyond what might be expected absent such government involvement. (A list, compiled from the ITC studies, of product sectors targeted by various nations is attached.)

The Need for Trade Law Reform:

The magnitude of recent trade deficits is to some extent "pulling us off-sides" in our attempts to find a quick remedy to this complicated problem.

We appear somewhat befuddled in isolating and addressing the root causes -- is it the overvalued dollar, the budget deficit, high US interest rates, etc? There is a tendency to react in an ad hoc manner and address the symptoms (the trade deficit), not the causes.

Masked by these trade deficit debates is a well-documented root cause: namely, the structural change in international trade resulting from extensive government intervention in international trade patterns. These government-caused market distortions have been increasing over the last few decades to the extent that they now represent the rule, not the exception. Foreign industrial targeting, as documented by the ITC and USTR, is undoubtedly the most sophisticated form of such government intervention to date.

Inadequacy of Current US Trade Laws

The USTR, in its excellent study submitted to the Congress in July 1985, identified six aspects of targeting which are not covered by current US trade law:

* They do not address GATT-consistent home market protection.
* They do not offset the economic effect of targeting when they are separated from the government practices by time.
* They do not counter "multiplier effects" that arise because commercial banks and others might give a targeted industry preferential terms.
* They do not fully offset the effect of targeting in third country export markets.
* They do not counter the entire benefit associated with unfair R&D assistance.
* They do not address cooperation among private firms which enhances competitiveness.

These shortcomings in US law, submitted by the USTR, cover the essence of the success, as well as the insidious nature, of foreign industrial targeting.

Why Substantive Trade Law Reform is Needed -- Now:

We cannot afford to be myopic in addressing trade law reform. There is a need to envision what type of trading world we would like to be operating in five, ten and fifteen years from now.

If our objective is to reestablish an open international trading system based on the equivalence of competitive opportunity principle, then we must begin to act now.

The current trend in international trade is toward mercantilism, not open trade. The major cause of this trend is the actions of governments. Such government policies indeed provide short term gains; however, they contain within themselves the seeds of long term international economic chaos.

As the economic and politicial leader of the free world, and with one of the largest markets in the world, the US must exercise its leadership by demonstrating that it will no longer tolerate market distortions caused by unfair trading practices of other governments.

The first step in achieving this objective is to change our trade laws so that the American response to such unfair trade practices is swift and effective.

It is essential that other nations realize the gravity of our resolve through tougher US trade law enforcement.

Once this has taken place, then, and only then, should we become engaged in extensive multilateral trade negotiations. Such multilateral negotiations should focus on reestablishing an open international trading system, not simply increased access to the US market.

CITE's Recommendation:

An important first step is to tighten-up US trade remedy law and enforcement by modifying Section 301 of the Trade Act of 1974 to identify foreign industrial targeting as an unfair trade practice, to reduce Presidential discretion, and to require a mandatory response to foreign government-caused market distortions which injure US industry, such as foreign industrial targeting.

By making these modifications to Section 301, many of the shortcomings of US trade law identified by the USTR would be taken care of.

The revisions to Section 301 which CITE recommends are comparable to those sections of HR 3777 and S 1356 which address foreign industrial targeting.

CITE'S RESPONSE TO ARGUMENTS

It is hard to define foreign industrial targeting. There are no internationally agreed definitions.

Response: Industrial targeting is "new" in that it represents a combination of coordinated government actions which have the effect of creating a commercial advantage for the domestic enterprise(s) over their foreign competition.

These trade distorting practices of government generally fall into the following categories:

1. home market protection
2. tax benefits
3. anti-trust exemptions/condoned anti-competitive behavior
4. science and technology assistance
5. financial assistance
6. foreign investment controls
7. government ownership

A combination of these practices by a government leads to a "government-created" comparative advantage. An advantage which would not exist absent such government involvement.

Oftentimes, the combination of government practices include specific practices which may be construed technically as "GATT-legal", eg, home market protection. However, the end result of major international market distortions caused by the combination of practices completely violates the intent of the GATT and US law, both of which never envisioned the practice of industrial targeting.

An illustrative list defining these trade distorting practices should become an integral part of Section 301.

This would be consistent with current language of Section 301 passed by the Congress which defines as unreasonable any "act, policy or practice while not necessarily in violation or inconsistent with the international legal rights of the United States ..."

Obviously, the Congress itself, in modifying Section 301, felt the need to be able to respond to acts that are technically "GATT-legal" but which flagrantly violate our national interests and place an undue burden on US commerce.

The European Community has recently adopted a Section 301-type of legislation.

Whether or not a combination of trade practices is GATT-legal must be put to the test of common sense. We are faced with a bit of a "catch-22" situation. Most nations, and the GATT itself, recognize the fact that the articles of GATT are ignored or evaded more than they are adhered to; yet, we are continually asked to measure our US actions and responses against these GATT standards which have become so tarnished from abuse and disuse that they are virtually unrecognizable.

US leadership and actions demonstrating our intolerance of trade distorting practices of other nations offers an opportunity to extricate all of us from this catch-22 double-standard.

* Why put on the added hurdle of an injury test in Section 301 proceedings related to industrial targeting? and Why reduce the discretion of the President in targeting cases and make the US response mandatory?

Response: These two questions are interrelated.

It is CITE's position that an injury test should be added to foreign industrial targeting cases under Section 301 to demonstrate the gravity of the particular case and to avoid frivolous petitions and allegations of foreign industrial targeting. CITE does not recommend adding an injury test to "normal" Section 301 cases, only those dealing with foreign industrial targeting.

CITE believes it is consistent to require a mandatory US response when an affirmative finding of injurious industrial targeting has been made by the ITC. Indeed, this is an added hurdle, but once having cleared it, there will be ample evidence that a foreign nation's actions have improperly caused injury to an American industry -- such injury should not go unanswered. The remedies proposed in CITE's legislative changes to Section 301 provide a flexible approach in resolving these trade problems.

Finally, several Presidents have been reluctant to take action under Section 301 because of their highly visible involvement in such cases. CITE recommends depoliticizing this process by making the President less of a "lightning rod" in Section 301 cases. Further, as outlined above, when injurious industrial targeting has been determined, a US response is called for -- the USTR is a more appropriate member of the Administration to implement (or negotiate) the US response.

* Isn't the US as guilty as any nation of practicing industrial targeting? Accordingly, won't the US be subject to retaliation?

Response: If the US were to identify industrial targeting as an unfair trade practice, the vulnerability of US exports to retaliation is quite low.

Direct US government support in the manufacturing sector represents less than 0.5% of value added, virtually de minimus. (Source: Federal Support of US Business, Congressional Budget Office, January 1984).

US government support of high technology industries, particularly that of the Deparment of Defense, is for national security reasons, not to increase the international competitiveness of American industrial sectors. The attached comparison of Japanese vs American (DOD) support of the semiconductor industry is illustrative.

Any US government support given to US export industries, like aerospace and agriculture, has been subject to countervailing action under existing GATT rules for some time. These sectors currently suffer restricted access to major competitive markets. CITE would recommend that primary agriculture products be exempted in US legislation language directed at foreign industrial targeting.

In summary, the US does not use industrial targeting practices. If the US definition and criteria for responding to industrial targeting were used by other nations to take a targeting action against the US, there is little likelihood they would be successful.

Excerpts from "An Analysis of the Effects of Targeting on the Competitiveness of the US Semiconductor Industry," A Study for USTR, Commerce and Labor

SEMICONDUCTOR INDUSTRY

Targeting practices may, among other things, subsidize R&D, reduce risk, decrease domestic competition, or increase available capital in order to reveal or create for the targeted industry or the targeted firm a comparative advantage that could not have existed in absence of government intervention.

United States

1. Home Market Protection
   - Tariffs reduced progressively:
     1967 - 12.5% to 1985 - 0%
   - Never applied quantitative restraint to imports
   - Never limited foreign direct investment

2. Tax Benefits
   - No tax program which creates special benefits for the US semiconductor industry.

3. Antitrust Exemptions
   - No special antitrust exemptions for US semiconductor firms.

4. Science and Technology Assistance
   - Periods of Significant R&D:
     1955 to late 1960s (USG 25% of total in 1960)
     Military and Space. Integrated Circuits
     1970 to 1976 (USG 1% of total R&D)
     1979 to 1984 (VHSIC about 6% of total R&D)
     (Military Program)

5. Financial Assistance
   - No special USG financial assistance to the semiconductor industry.

Japan

1. Home Market Protection
   - Formal import quotas through 1976
   - Tariffs were about double those of the US -- 1970-1980
   - Foreign direct investment restricted until 1976
   - Informal restrictions alleged to persist
   - GOJ agencies have de facto "Buy Japanese" policy

2. Tax Benefits
   - Special tax treatment for semiconductor operations
   - Large initial depreciation schemes provide significant cash flow in the first year of an asset's acquisition and tax reserves.

3. Antitrust Exemptions
   Japanese law takes a permissive attitude toward joint R&D
   Japanese government gives exemptions to antitrust laws:
   PL 84 authorizes MITI to take concerted action (by specified industries including semiconductors) expressly exempt from antitrust law, to achieve an elevation plan

4. Science and Technology Assistance
   Japanese Government has assisted in the following programs: VLSI, supercomputer, optoelectronics, next generation industries, manufacturing technology.

5. Financial Assistance
   Japanese government financial assistance includes R&D funding, loans for product and process development, and loans for capital investment.
   The subsidy/loan system for large R&D programs is on a success-conditional basis -- ie, pay only if profitable; MITI grants need not be repaid
   Long term credit banks and the Industrial Bank of Japan lend to targeted industries at below market interest and with favorable repayment terms.
   Private banks are expected to make additional funds available to firms which receive loans from the Japan Development Bank.

* Section 301 is intended to gain access for US exports whereas Section 201 is intended to provide relief from a surge of imports into the US. Therefore, it is not appropriate to bring action against imports into the US under Section 301.

  Response: This argument is historically accurate but unfortunately not responsive to current international trade realities.

  The market distorting practices of other nations, such as foreign industrial targeting, can have a simultaneous adverse impact on American manufacturers in domestic markets, the US market and third country markets.

  An American industry that has become "targeted" and seeks statutory relief should be able to do so under only one section of our law. Section 301 with appropriate modifications would provide the needed flexibility in responding to such multi-market problems as foreign industrial targeting.

  An unnecessary and expensive burden would be placed on an American petitioner if required to seek relief under both Sections 201 and 301.

  Further, Section 201 is a "fair trade" statute applied on a most-favored-nation basis; that is, it seeks relief from imports from all sources. Foreign industrial targeting is practiced by individual nations and relates to unfair trade practices.

  Section 301 is intended to provide relief from the actions of a foreign government "which burden or restrict" US commerce. Certainly, loss of major market share in the US market as the result of foreign industrial targeting practices should be considered as a "burden" on US commerce.

  Our objective in trade law reform should not be that of legislative symmetry but rather the modifications of our laws to meet the problems at hand.

CITE'S RECOMMENDATIONS TO COUNTER FOREIGN INDUSTRIAL TARGETING PROGRAMS

CITE's Recommendations

The revisions to Section 301 of the 1974 Trade Act which CITE supports are comparable to proposed changes in HR 3777 and S 1356.

These proposed revisions are described below.

Targeting Programs Made Actionable

Section 301 of the Trade Act of 1974 would be amended to define as an unreasonable practice which burdens US commerce, and therefore actionable under that law, any government plan or scheme consisting of coordinated governmental actions that are bestowed on a specific enterprise, industry or group thereof ("beneficiary") the effect of which is to assist the beneficiary to become more competitive in any class or kind of merchandise. The governmental actions include, but are not limited to, the provisions of capital on preferential terms, encouragement of anticompetitive behavior, protection of the home market, special restrictions on technology transfer or government procurement and the use of investment restrictions that limit competition in a specific sector thereby promoting competitiveness.

Specification of Adverse Effects on US Industries

The adverse effect of successful targeting could be demonstrated by effects on financial performance; by an erosion of US market share in the targeting country or in third country markets; or by injury or threat of injury through increased imports (current or prospective) into the US market (see amendments to the threat of injury definition, described below). The enhancement of the targeted industry's competitive position could be achieved before any erosion of market share here or abroad has occurred and may not disappear after the targeting program has been terminated.

Transfer of Authority to the US Trade Representative

The Office of the US Trade Representative (USTR), rather than the President, would be given the primary authority to administer Section 301. The President would retain the authority to disapprove the USTR's decisions. The role of other agencies would be to advise the USTR and support the investigative process.

Expansion of Remedies

The US Trade Representative would be given the authority to negotiate agreements with foreign governments to eliminate the adverse effects of their industrial targeting policies. A procedure would be established through which the USTR could recommend domestic measures to the Congress for "fast track" remedial legislation to aid injured industries, firms or workers. The USTR could also, as under existing law, impose import restrictions (duties, quotas) on any product or service of the offending nation -- not merely the products which have been the subject of the targeting program. Moreover, the Secretary of Commerce would, after consultation with the petitioner, commence actions under the countervailing duty or the antidumping law on information uncovered in a Section 301 investigation revealing the presence of either subsidies or dumping.

Best Evidence Rule, Procedural Changes

The US Trade Representative would be directed to make his findings on the basis of the "best evidence" available to him, which may be no more than the information submitted with the US industry's petition. In cases involving industrial targeting, the foreign practice would be deemed to be *prima facie* unreasonable. The US Trade Representative is required to make a separate, preliminary decision as to whether a foreign program or practice is actionable under Section 301 *before* proceeding to consider what remedial steps should be taken. This preliminary decision would be required within three months of the initiation of an investigation.

After a petition is filed, the US Trade Representative would be required to consult with relevant private sector advisory committees before determining not to investigate a complaint or before deciding that no relief will be granted. If the private sector committees disagree with the decision not to act, the USTR must report that fact to Congress, along with his reasons for not following the advice proffered.

Required Action

Where a Section 301 petition alleges that foreign industrial targeting is present, the US International Trade Commission would commence a separate investigation to determine the extent to which the affected US industry has suffered "material injury", a term which is defined as harm which is "not inconsequential, immaterial or unimportant". If the USTR finds that the US industry has raised a valid complaint with respect to foreign targeting, and if the USITC finds that material injury has occurred, then the remedial measures proposed by the USTR must fully offset the benefit the foreign industry has received as a result of the targeting program.

Monitoring

The Secretary of Commerce would be directed to commence monitoring of foreign targeting programs, on his own initiative or in response to a request by representatives of a US industry, whenever a program appears likely to result in harm to a US industry.

Investigatory Staff

Provision would be made for fully adequate staff of Section 301 investigations.

Consistency with US International Obligations

The USTR would be authorized to grant compensatory trade concessions to a foreign government or rescind an action, if the introduction of offsetting measures with respect to foreign products is found to have violated US obligations under the General Agreement on Tariffs and Trade (GATT).

Threat of Injury

The existing standards governing the USITC's determination of threat of material injury are vague. Clarification is needed if domestic industries are to be adequately protected from the many novel manifestations of injury resulting from the ever expanding number and type of unfair practices employed by foreign governments to aid their industries. At a minimum, the USITC should be required to consider the following factors:

* current and anticipated capacity in the exporting country;

* level of demand for the product under investigation in the country of exportation and its relationship to existing and new capacity in that market;

* building of inventories of imported merchandise;

* availability of other markets for the exported products;

* ability of the US market to absorb additional imports without further reducing domestic production;

* existence by value and volume of contracts for the imports under investigation;

* impact that increased imports would have on the US industry in terms of the market life of key products and the recouping of research and development costs;

* nature of any subsidies and the trade effects likely to arise from them;

* rate of increase of the dumped or subsidized exports to the United States;

* loss or threatened loss of market share by the domestic industry, globally, in foreign markets, and in the United States market.

* In determining whether a threat of loss of market share exists, the USITC would take into account:

  — provision of capital, loans or loan guarantees which would not otherwise be available from commercial sources;

-- existence of special protection of the foreign home market either through formal government action (eg, tariffs, quotas, licensing requirements or investment restrictions) or informal government action (eg, preferential government procurement, administrative guidance to industry, or waiver of generally applicable antitrust laws) which strengthens the competitiveness of the foreign industry;

-- support for programs of joint research and development among private enterprises, with or without direct government intervention;

-- foreign government's programs designed to encourage the provision of capital to a particular enterprise or group of enterprises or industry or group of industries;

-- promotion, support or tolerance of an industry cartel;

-- provision of conditional loans where the conditions for repayment have not occurred and are not likely to occur within 12 months of the date of the initiation of an investigation.

INTERNATIONAL TRADE COMMISSION ANALYSES OF FOREIGN INDUSTRIAL TARGETING

At the direction of the Congress, the International Trade Commission (ITC) undertook an extensive analysis of the foreign industrial targeting practices of other nations.

The ITC began their analyses in April 1983 and they were completed in January 1985. The ITC work was done in three phases:

I -- Japan
II -- European Community and Member Countries
III -- Brazil, Canada, Korea, Mexico, Taiwan

The ITC developed the following working definition of targeting:

> "Industrial targeting means coordinated government actions taken to direct productive resources to help domestic producers in selected industries become more competitive."

These in-depth studies of the ITC documented the wide-spread market distorting practices of the major trading nations of the world.

CITE has summarized these excellent ITC studies by highlighting the product sectors selected and the specific foreign government's practices used to improve the competitiveness of each sector.

INTERNATIONAL TRADE COMMISSION (ITC) REPORTS:
INDUSTRIES TARGETED BY FOREIGN GOVERNMENTS
WITH
SUMMARY OF PRACTICES USED

PAGE	COUNTRY/INDUSTRIES TARGETED
1-4	JAPAN REPORT -- October 1983
	Aircraft
	Aluminum
	Autos
	Computers
	Iron & Steel
	Machine Tools/Robotics
	Semiconductors
	Telecommunications
5-6	EUROPEAN COMMUNITY REPORT -- April 1984
	Coal
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	Machine Tools
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7-9	French Policies
	Aircraft/Aerospace
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10-11	British Policies
	Aircraft/Aerospace
	Autos
	Computers/Peripherals/Telecommunications
	Heavy Electrical Equipment
	Machine Tools/Robotics
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12-13	German Policies
	Aircraft/Aerospace
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	Semiconductors
14	Italian Policies
	Autos
	Machine Tools
	Textiles/Apparel
	BRAZIL/CANADA/KOREA/MEXICO/TAIWAN REPORT -- January 1985
15-17	Brazilian Policies
	Aerospace/Aircraft
	Autos
	Computers
	Heavy Electrical Equipment
	Footwear
	Pharmaceuticals
	Semiconductors
	Shipbuilding
	Steel
	Telecommunications
	Textiles/Apparel
18-19	Canadian Policies
	Aerospace/Aircraft
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	Petroleum/Gas
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20-22 Korean Policies
Autos
Computers/Semiconductors/Telecommunications
Heavy Electrical Equipment
Machine Tools
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Shipbuilding
Steel
Textiles

23-24 Mexican Policies
Autos
Computers/Electronics
Petroleum/Gas
Pharmaceuticals
Steel

25-27 Taiwanese Policies
Autos
Computers
Electronics/Telecommunications
Machine Tools/Robotics
Petrochemicals
Pharmaceuticals
Shipbuilding
Steel
Textiles/Apparel

JAPANESE POLICIES

Aircraft/Aerospace (pp. 126-127)
Since 1950s:
* R&D grants
* Preferential loans
* Special tax loans
* Success-conditional loans for joint ventures
* Consortium of Kawasaki, IHI, Mitsubishi for R&D projects
* Government labs doing research for commercial use

[Note: no import protection due to needed technology]

Aluminum (pp. 128-129)
Since 1970s:
* Rationalization -- coordinated government investment and industry cooperation to reduce excess capacity
* Government has taken steps to eliminate 24 percent of capacity
* Joint-sales companies are authorized to reduce competition
* Tariff quota system established (9% tariff down to 5.5%, importing firm pays difference into a fund to subsidize interest payments on closed facilities)
* Government urged the primary industry to seek "vertical integration" with fabricators
* In 1978, aluminum was designated a structurally depressed industry thus, allowing manufacturers to receive financial assistance, to organize cartels, to cooperate with government to plan changes to industry's capacity

Autos/Trucks (pp. 129-131)
Since 1952:
* Protection of home market through tariffs, quotas, foreign direct investment limits
* Mergers are encouraged by government (however, all MITI's attempts to force consolidation appear to have failed)
* Loans, grants, tax incentives for plant modernization/expansion have been used by the government
* Government has assisted industry in developing export markets
* Inspection standards for imports helped to slow foreign shipments

Computers (pp. 131-138)

Since 1958:

* Grants and subsidized loans to industry for R&D
* Special tax measures
* Government technical support
* Government-funded leasing company -- open only to domestic computers
* Home market protection: import and investment restrictions
* 1957 -- "Law Providing Temporary Measures for the Promotion of Electronics" designated computers as eligible for financial assistance (ie, special depreciation and direct grants) and exempted computer manufacturers from anti-monopoly law
* Stringent licensing requirements for permission to operate in Japan
* Government designated which firms to organize joint ventures with foreign computer makers so fees would not be bid-up and no Japanese firm would have a monopoly on technology
* Quotas and high tariffs until 1976
* Computer software development -- six firms and government joined to promote use of software; joint research was granted Development Bank loans (ie, $1.1 million in cpaitalization secured $30 million in loans)
* Current programs:
  - -- supercomputer -- 1981-1989: government lab will participate while firms will do parallel in-house research
  - -- optoelectronics -- cartel of companies have established facility with 30 researchers (both government and private) housed in Fujitsu's laboratories
  - -- 4th generation computers -- VLSI was phase 1, ran from 1976-1979 with five firms doing joint research and government funding of 41 percent of projects; Phase 2, 1981-1985, involved 8 firms and government funding of 48 percent.
  - -- 5th generation computers -- 1979-1991: to build computers with some artificial intelligence/knowledge; technology will be government property and licensed to all firms, including foreign, for a patent fee and proof that firm has capacity for development of product; no firm will be allowed an exclusive license on technology
  - -- software projects -- government has underwritten number of government/inudstry R&D projects; 6-year program where 17 major Japanese firms directed development of programs for 100 smaller firms received $30 million in government funds -- government markets software developed; part of Phase 2 of 4th generation program will develop programs/languages for computers -- half will be funded by government, half by 8 firms participating (10 percent of these funds will go to independent, small Japanese firms, 90 percent to the large manufacturers

Iron and Steel (pp. 138-141)

Since 1950:

* During early stages of industry development, government gave financial assistance, home market protection, assistance in improving technology, permission to form cartels, tariffs and foreign exchange controls. However, these barriers declined after 1960.
* Technology imports restricted through limits on imports and foreign investment restraints
* Low interest loans through Japan development bank
* Government funding of R&D -- ie, from 1973-83, government provided $104 million to projects to improve steel's energy efficiency
* Government sanctioned rationalization and depressed industry cartels, as well as export and industry expansion cartels -- eg, 1977 -- small steel bars and rods cartel; 1978 -- open-hearth electric furnace cartel

Machine Tools/Robotics (pp. 141-147)

Since mid-1950s:

* Home market protection -- until 1965, only machinery not domestically made could be imported
* Government authorized cartels
* Special tax measures for industry -- accelerated depreciation, R&D credits, export deductions
* 1953 -- Export Association established at encouragment of government to share market information and promotion costs, assemble groups of firms for large export orders, act as arbiter in negotiations with government (but, association cannot set prices)
* 1956 -- "Extraordinary Measures Law for Rehabilitation of Machinery Industry" -- authorized rationalization cartels, set guidelines for technical improvements, measures to encourage basic standards, authorized MITI to divide product lines among firms. [Note: this law is still in effect]
* 1960s -- consolidation and coordination of investment activities of small firms encouraged by government through preferential loans, preferential tax rates
* 1970s -- government assistance shifted to numerically-controlled (NC) machine tools and more recently, to robotics/flexible manufacturing systems (FMS): government grants, loans, tax incentives to encourage firms to shift resources/investments to these areas.
* MITI enforces price floor for exports through licensing system
* Government leasing company, JAROL, was established with low-interest development bank loans to encourage the use of robots in firms. Lease robots for cheaper and shorter periods than private leasing firms. Only domestic robots are leased and lessee receives special tax depreciations for robot installation.
* Government R&D projects:
  -- 1977 -- FMS development -- 7 years at cost of $54 million
  -- 1977 Manufacturing System with Lasers -- $44 million of government funds with 20 Japanese firms involved

[Note: no formal machine tool export cartel exists in Japan today]

Semiconductors (pp. 148-150)

Since early 1970s:

* Until 1976, high tariffs, restrictive quotas, investment restrictions protected Japanese market -- in 1979, US and Japan both lowered duties on imports and import regimes are comparable now
* Since 1976, main government aid though government-funded cooperative R&D projects -- ie, as part of VLSI program, 6 Japanese firms and government (as well as NTT) set up a research association where government provided $136 million in success-conditional loans
* Government owns 5 percent of patents developed in Phase 1 of the 4th Generation project and provides these patents free to members of the VLSI Association -- foreign firms were not allowed to license these patents until 1980; however, only 2 US companies were granted licenses and these were tied to cross-licenses in other areas.
* For Phase 2 of 4th Generation and all of 5th Generation projects, 10 firms were commission be MITI to form a research association with $113.6 million in government funds.

Telecommunications (pp. 15-154)

* Market completely closed to foreigners until 1981 -- however, imports are less than 2 percent of total NTT procurement.
* NTT has "family" of suppliers, 4 of whom are large, vertically-integrated firms which have benefitted from numerous government programs.
* NTT has own research lab, but licenses technology to "family" so NTT suppliers can meet NTT standards
* Telecommunications products are covered under the 1978 "Temporary Law for the Promotion of Electronic and Machinery Industries" which allows special depreciation, direct government grants and exemptions from anti-monopoly laws.

EUROPEAN COMMUNITY POLICIES

Coal (pp. 130-132)

- Regulates members' state aid through 1976 code designed to increase domestic production of coal for EC use
- 1951 -- European Coal and Steel Community was established (and remains) to encourage domestic consumption and provide subsidies lower cost of European coal
- Interest rebate of 3 percent to coal producers for modernization investments.
- ECSC proposed regulation to EC Council in 1983 to give financial support to urge investments to modernize, reduce stock, promote production of brown coal and peat because cost of EC coal is double imported coal. [At writing of ITC, EC Council had not yet voted on this proposal]

Computers/Peripherals (pp. 35-40)

- ESPRIT -- January 1983 -- designed to improve information technology industries' competitiveness internally (intra-EC) and in world markets. EC gives 50 percent or more of costs for individual projects into research. Industries covered include: advanced microelectronics, software, advanced information processing, office automation, computer-integrated manufacturing. Although research grants are purportedly for "precompetitive" (ie, before commercial applications) projects, EC requires that contractors develop/exploit results in a "reasonable" amount of time or else rights to research revert to EC and applicants may license rights to develop, manufacture, use, sell results.

[Note: ESPRIT is supposedly open to foreign firms also, but at time of ITC writing, grants were still being processed and outcome was uncertain]

Machine Tools (p. 135)

- EC negotiated VRA with Japan on 10 items, including machine tools in 1982.
- EC has stimulated production of numerically-controlled machine tools production, coordinated industry needs with those of other EC programs on advanced technology and coordinated public/private research on machine tools.

Steel (pp. 140-148)

Since 1951 and formation of European Coal and Steel Community

- Since 1977 -- "Davignon Plan", purpose being to reestablish financial viability of EC steel producers and restructure industry through modernization and capacity reduction. Plan establishes minimum import price levels, controls imports through quotas and Common External Tariff, controls shipments within the EC by domestic producers, and restructures EC industry.
- EC code ties assistance to industry restructuring
- EC provides funds for: loans for industrial investment, financing early retirement, redeployment of workers, and research projects (EC financed 92 steel projects in 1982).

Textiles (pp. 148-150)

- 1970s -- protected intra-EC market from imports through negotiated VRAs with countries and Multi-Fibre Agreement
- EC committee maintains competition among member countries
- EC finances loans during industry's financial crises
- Government extends loans for rationalization, protection of employment and regional modernization
- Shared-cost R&D monies for research on industrial technology applications research are partially funded by EC government.

FRENCH POLICIES

Aircraft/Aerospace (pp. 125-126)

Since after World War II:

* Nationalization of companies to consolidate and improve efficiency of industry -- Aerospatiale was established in 1970 and is the only commercial airframe manufacturer in France
* Discriminatory government procurements as well as encouragement to private procurers to "Buy French"
* Government provides capital for development, production and marketing of new aircraft -- in the recent past, the bulk of government funds went to the Concorde ($4.4 billion by 1979); now, funds are slated for Airbus projects.
* 1983 -- $31.8 million was budgeted for commuter aircraft developed by Aerospatiale.

Autos/Trucks (pp. 128)

* Government extends loans for upgrading factories with robots and automated assembly line techniques
* Renault, a major manufacturer in France, is wholly government-owned
* France negotiated a VRA with Japan to keep imports to 3 percent of French market -- to reinforce this VRA, France has erected administrative barriers to hold Japanese imports to agreed level

Electronics (pp. 133)

* Major government intervention in the form of subsidies -- 1982, Plan Electronique was established with approximate budget of $21 billion of public/private sources; this money will be invested in 10 strategic electronics industries over a 5-year period. Purpose of Plan: rationalization and improvement of these sectors in their competitive position with US/Japanese firms. Telecommunications will get almost half of funds, with rest slated for CAD/CAM development, mini- and microcomputer modules, engineering software and general R&D.

Heavy Electrical Equipment (pp. 134)

Since 1970s:

* Government began restructuring industry and, after ten years, two monopoly suppliers emerged: Framatone (nuclear plants) and Alsthom-Atlantique (turbine generators). Government grants these firms R&D subsidies up to 50 percent of project costs and also subsidies for investments.

Machine Tools (pp. 135-136)

* In 1981, government began a 3-year program to rationalize, consolidate and push to high tech. Along these lines, the government reduced numerically-controlled (NC) machine tool imports from 60-35 percent by 1984; directed state aid, directed firms to combine into large/strong/competitive firms, and guaranteed loans.
* Government set up program to promote purchases of machine tools through public subsidization of new purchases.
* Government established a 3-year program to study design, manufacturing processes and automation
* Protection of home market accomplished through pressure to "Buy French", stipulation the customs documents be in French, time-lags in obtaining import licenses.
* French manufacturers have complained that it is much harder to get bank loan for imports than it is for domestic tools
* Government funds/established the Inter-Agency Robotics Committee to assist in the design, production, application of robotics that will be competitive in domestic and international markets. Committee will provide low-cost funds for installation and will fund R&D projects and personnel training.

Semiconductors (pp. 138-139)

Since 1960s:

* Government initiated mergers in 1968 to create SECOSEM, a semiconductor company owned by the Thomson group -- 10 years later, nearly all French-owned semiconductor producers were consolidated into electronics "national champion" the Thomson group.

* SECOSEM received subsidies until 1977
* Funds for development of technology, production and R&D was financed by the government -- ie, in 1977, $132 million for development of integrated circuit technology.
* Some research projects aided by government included: microprocessor application development and electronics application

[Note: a French "national champion" is eligible to ask for government aid to 'maintain position of firm and thus, of the French.'"]

Telecommunications (pp. 132-133)

* To reduce dependence on foreign suppliers, French government "urged" 2 foreign telecommunication subsidiaries (ITT & Ericsson) to sell-out to Thomson-CSF, thus increasing French share in the home market for 43 to 71 percent.
* Nationalization of CGE and Thomson-Brandt, the 2 major equipment suppliers to PTT, was initiated by government
* PTT procurement is attained through government-sanctioned cartels: SOCOTEL (switch equipment) and SOTELEC (transmission equipment). These cartels also have jurisdiction over coordination of public/private R&D, technical specifications, distribution of government investment funds.
* France extends liberal mixed-credit financing to purchasers of French telecommunication equipment.
* Government gives domestic subsidies to improve efficiency and competitive position of French firms against Japanese/American firms.

Textiles/Apparel (pp. 150-151)

* In 1980, textiles/apparel were designated of "strategic importance" and targeted for specific restructuring and modernization efforts: "dynamic" firms are eligible for grants and low cost loans; "healthy" firms are eligible for loans to strengthen capital base and reserves; banks are eligible for loans (partially state-financed) for lending to industry.
* CIRIT is the government committee in charge of disbursement of state aids to the textile/apparel industry: assistance for mergers, modernization, rationalization and subsidies for trade organizations, research centers, etc. CIRIT is funded through a levy on textiles.

[Note: French government owns major commercial banks and controls many financial intermediaries]

BRITISH POLICIES

Aircraft/Aerospace (pp. 127-128)

* Nationalization of firms to accelerate rationalization: Short Brothers (small commuter/transport manufacturer) is wholly government-owned; British Aerospace (a merger of several firms in 1977) is 48.43 percent government owned.
* Government gives "launch aid" (partial funding for up to 50 percent of development costs of aircraft projects) -- from 1945 to 1976, aid amounted to 700 million pounds to the civil aerospace industry.
* Direct funding for various aircraft and engine projects has been given -- recently promised British Aerospace $372.5 million in launch aid for BA's share of Airbus A320 model aircraft.

Autos (pp. 129)

* Government negotiated a VRA with Japan fo keep imports at 11 percent of British market
* Government has traditionally intervened when firms in financial trouble; also, encourages rationalization
* British-Leyland has particularly benefitted from state aid: 1.9 billion pounds in equity and loans from 1976-1981

Computers/Peripherals/Telecommunications (pp. 133-134)

* The Information Technology Division of Britain's Dept. of Trade and Industry allocate 30 million pounds a year to these industries with disbursement through the Support for Innovation program (ie, a recently established program to develop technology with grants equal to one-third cost of project)
* Recent government Alvey program provides up to 50 percent financing for R&D done which involves collaboration of two or more researchers from two or more firms. Alvey budget is 150 million pounds for 1982-1987.

* Government sponsors preproduction orders for new equipment -- attains prototypes of new systems, gives to customer on a trial basis, if after 1 year, customer decides not to buy, government returns prototype to manufacturer and pays any financial loss
* Microprocessor Application Project (MAP) consists of government sponsored programs to increase public awareness, educate and train on new systems, funds product feasability studies and funds R&D grants of up to one-third of project costs.

Heavy Electrical Equipment (pp. 134-135)

* National planning and rationalization to create a national champion able to compete against Japanese and American companies -- General Electric (no relation to US company) emerged as national champion after merging with English Electric and AEI in 1968. Government continued attempts to consolidate and rationalize through the 1970s.
* Government uses grants for R&D and domestic subsidies to assist British heavy electrical industry.

Machine Tools (pp. 137-138)

* Government support began in 1930s with home market protection -- only tools unavailable in UK could be imported duty-free. By the 1970s, state programs were available for improving production, upgrading technologies and applications.
* Support shifted in 1982-1983: 37 million pounds for CAD/CAM development and 35 million pounds for Flexible Manufacturing Systems (FMS).
* Robot Support Program was recently established for government promotion of the use and development of industrial robots -- government funds feasability studies, provides grants for development of advanced robots, and will pay for up to one-third cost of installing new robots.
  [Note: this aid does not specify "domestic" only]
* FMS Development Program -- government pays up to one-third cost of R&D projects, shared-cost (where government pays 50 percent of development costs recovered through royalties), subsidy where customer can take on a trial one-year basis prior to actual purchase, and pays one-third cost of installing FMS.

Semiconductors (pp. 139-140)

* In 1978, the government's National Enterprise Board (NEB) supported creation of domestic integrated circuit manufacturer, Inmos. NEB invested $108.65 million in Inmos equity between 1978 and 1982.
* Government standards for electronics (integrated circuits and components), BS 900, has been interpreted as requiring the presence of an official UK inspector during manufacture of the product. This standard has been used selectively to prevent some imported products from receiving import certification.

WEST GERMAN POLICIES

Aircraft/Aerospace (pp. 126-127)

Since 1970:

* Government has encouraged aerospace industry to maintain technological and commercial competitiveness. Rationalization through government-encouraged mergers has been one tool: government initiated the merger of MBB and VFW to accelerate rationalization, strengthen competitive position of companies and help strengthen overall structure of industry.
* Government support R&D through "repayable contributions" contingent on industry providing 40 percent of cost of project.
* Germany major airline, Lufthansa is 74.8 percent owned by the government.
* Of a series of industry-specific tax benefits, aircraft receives 35.9 percent
* Aid for Airbus projects has included: development funding, loan guarantees to raise captial, production funding, and interest raid subsidies for sales assistance. Recently, the government deferred repayment of loans to 1994 or later.

Autos (pp. 129)

* Negotiated VRA with Japan, limiting Japanese imports to 10 percent of German market
* Government owns 28 percent of domestic auto industry
* During slow sales periods, government has extended financial assistance to both VW and BMW
* R&D projects are generously funded by the government

Computers/Peripherals (pp. 79, 84, 133)

* The government's Ministry of Research and Technology (BMFT) has primary responsibility for technology policy in West Germany and decides where grants should be distributed. In 1982, 78 percent of grant funds went to private firms; the same year, BMFT provided 90 percent of direct government support for commercial R&D.
* BMFT and other government-sponsored grants for R&D may have to be repaid if project is commercially successful.
* Germany has several programs that support development of new, innovate products in computers and other high tech sectors
* Majority of government aid to computer industry has gone to Siemens, West Germany's largest computer manufacturer

Machine Tools (pp. 137)

* Government support for R&D in robotics has totaled $32 million since 1974.
* Government has recently allocated $202.5 million for 4-year R&D program on robotics, CAD/CAM, factory automation systems; grants for up to 50 percent for development of production technology and also aids education and training of workers

Semiconductors (pp. 139)

* Small government R&D support to semiconductor industry began in 1967
* 1969 -- "Second Data Processing Program" -- broadened scope of intervention to include assistance for semiconductors, computer hardware, peripherals, software and applications. From 1969-1976, aid amounted to $32 million
* In 1983, much of government grants to semiconductor industry, went to purchase equipment (regardless of country of origin) to manufacture semiconductors.

ITALIAN POLICIES

Autos (pp. 129)

* Negotiated VRA with Japan to limit Japanese imports to 2200 units per year
* Government-sponsored restructuring plan since 1981
* Government owns Alfa-Romeo, main car manufacturer in Italy.

Machine Tools (pp. 137)

* Government extends low-interest loans and grants for manufacturing research
* 1965 -- Sabatini Act -- allows banks to receive government aid thereby allowing banks to extend deferred loan repayment/preferential interest rates for domestic purchases of industrial machinery/equipment.

Textiles/Apparel (pp. 151)

* Assistance to textile/apparel firms from 1950s through 1970s, mainly through acquisition of bankrupt firms. Gepi, state-owned holding company, was established in late 1960s to acquire bankrupt firm, revamp and sell -- private sector has complained that they cannot compete with heavily-subsidized Gepi-held firms. In 1977, Gepi actions were restricted to southern Italy -- however, by 1978, 11 percent of manufacturers in Italy were owned/controlled by Gepi.

BRAZILIAN POLICIES

Aerospace (pp. 62)

* Brazil's airplane industry centers around Embraer, the government controlled (but privately owned) manufacturer. Government allows one percent of corporate tax to be used to buy Embraer stock.
* Brazil financed training of aerospace engineers and built a center for aerospace for R&D and production.
* Government sponsored R&D for launching space vehicles amounted to $20 million in 1984.
* Extensive government financial support for Embraer
* Avibras, private missile manufacturer, receives government support for exporting missiles.

Autos (pp. 62-64)

* In 1955, Brazil set up program to encourage foreign firms to establish subsidiary in Brazil:
  -- duty-free import of goods/components needed
  -- gradual local content increases to reach 95 percent by 1960
  -- prohibition of imported cars
  -- fiscal, financial and foreign exchange advantages to participating foreign firms
* In 1970s, Brazil shifted its intervention policy to export expansion:
  -- subsidies and import tariff reductions to manufacturers in exchange for commitments to export (ie, manufacturers recently promised to export $17 billion worth of autos in exchange for easier access to $4 billion of imported capital/components and other subisidies.

Computers (pp. 64-65)

* "Informatics Law" (recently extended to 1992) reserves production of computers, as well as sales in Brazil, to national firms; prohibits foreign direct investment, wide range of financial incentives for Brazil firms including income tax benefits, import tax benefits and priority federal funding.
* COBRA, national computer firm owned by the government, receives majority of these benefits
* Various incentive programs of subsidies and tax relief tied to achieving local content

Heavy Electrical Equipment (pp. 65-66)

* Import substitution enforced through procurement cirteria that emphasize high local content
* Electrobras (mostly government owned) is the principal entity for coordinating Brazil's purchases; also, planning and coordinating authority for the Brazilian electrical power projects. Maintains 14 working groups actively concerned with the nationalization of materials, components and equipment for the electric power sector.

Footwear (pp. 67)

* Tariff exemptions on imported equipment/raw materials and other tax and financial incentives extended by the government throughout the 1970s.
* Preferential working capital financing for exports, income tax reductions for export earnings, and reductions in certain value-added taxes tied to amount of exports.

Pharmaceuticals (pp. 67)

* Rigid control of drug/pharmaceutical prices in domestic market
* Government is worried about small domestic share held by Brazilian firms (6.9 percent in 1983); currently looking at ways to promote national firms in this sector

Semiconductors (pp. 68)

* Government extends market reserve policy (ie, only Brazilian firms allowed to manufacture in Brazil -- like in computers):
  -- restricts foreign investment (eg, Philco wanted to expand semiconductor plant, government said no and in early 1984, Philco sold its integrated ciruit plant to Brazilian-owned compnay)
  -- limits level of imports
  -- pressure put on government-controlled telecommunications and private sector to purchase solely from domestic manufacturers

Shipbuilding (pp. 69)

* Government financing brought Brazil from insignificant shipbuilder in 1958 to second largest in world by 1980.
* Brazil's development bank provides export financing with interest equalization loans that subsidize foreign commercial bank loans for a ship purchase to the level of subsidized European rates.

Steel (pp. 68)

* Since the 1950s, the Brazil development bank has been principal source of capital and major stockholder in most of the industry -- today about 60 percent of capacity is owned by government and controlled by government holding company, Siderbras. Another government agency, Consider, coordinates all expansion plans and issues import permits.
* Government extends financing to industry: subsidizes exports extensively through preferential working capital financing, government provision of equity capital, assistance in paying foreign loans, subsidized export financing and tax credits for exports.

Telecommunications (pp. 69)

* Government is sole purchaser of equipment
* State entities control systems: Telebras, for telephone system; Embratel for radio-telegraph
* Foreign manufacturers have been forced to take on Brazilian partners as majority shareholders to sell to Brazilian market
* Import tariffs are high -- 30-45 percent

Textiles/Apparel (pp. 70-72)

* From 1969 until 1980, all Department of Industry and Commerce (CDI) approved investments in textiles/apparel received benefits: reduced import duties, reduced border taxes on imports, a waiver on prior deposit on imports, access to official subsidized credits, exemption from certain value-added taxes for purchase of domestically produced capital goods, allowance of accelerated depreciation for the use of domestic capital equipment.
* Since 1981, CDI will not give approval for new investments. However, exporters will receive benefits: preferential financing for exports, income tax exemptions on export earnings, export credit tax premium, other fiscal benefits for special export programs.

CANADIAN POLICIES

Aerospace (pp. 112-113)

* Government owns the two major airframe manufacturers: deHavilland and Canadair. Benefits to these firms include: loan guarantees, equity investment, export credits, R&D support, export development assistance and purchases (which, from 1981-83, amounted to $2.5 billion worth of purchases)
* Government funded projects:
  -- R&D and production of engines -- 10-year program with Pratt-Whitney -- government funds equal 28 percent of total cost
  -- Bell-Textron building plant in Quebec -- government funds equal 53.5 percent of total building costs
  -- Development and manufacture of light, twin-engine helicopters in Canada with Messerschmitt -- government funds equal 48 percent of project costs

Autos (pp. 113)

* Prior to signing of Auto Products Trade Act (APTA) between US and Canada in 1960s, Canada protected market with high tariffs and import duty remission to Canadian manufacturers.
* Since signing of APTA, all duties on specified vehicles and parts have been removed. However, US and Canada have enforced this pact differently: US allows duty-free to all Canadian imports including imports going to individuals; Canada allows duty-free on MFN basis and will not include imports going to non-manufacturers.
* Government has been increasing level of local content required to sell in Canada and increasing level of production for exports.

Petroleum/Gas (pp. 116-119)

* In 1975, government formed Petrocanada to buy oil/gas property and act as government's agent to buy petroleum companies; in 1982, Petrocanada was authorized to guarantee loans for Dome Petroleum and to purchase $400 million of Dome Canada debentures. Now, Petrocanada is 7th largest producer in Canada.
* Petroleum Incentives Program -- incentives for exploration development equal grants to cover 80 percent of exploration are only available to majority Canadian ownership companies.
* Licensing to produce oil/gas on Federal lands requires firms to have at least 50 percent Canadian ownership/control
* 1980 -- National Energy Program established to increase Canadian ownership of oil and gas industry to 50 percent by 1990 (26 percent in 1982). Purpose of NEP is to eliminate oil imports and make Canada energy-self-sufficient by 1990 by raising level of government ownership, shifting to other forms of energy, dissociating price from world price so that Canadians pay no more than 85 percent of world price.
* Canada currently controls the price of oil/gas sold in Canada.

Telecommunications (pp. 114-115)

* Canadian industry is dominated by two systems which are a mix of provinically, private and federally-owned.
* Restrictions on foreign direct investment
* Government procurement favors domestic manufacturers
* Direct government assistance to help domestic -- eg, $24 million to buy capital equipment and for product development
* Discriminatory tariffs and customs procedures (tariffs are almost double US tariffs)
* Government's Telecommunications Engineering Laboratory test equipment and provides technical assessments of commercial viability to industry.

KOREAN POLICIES

Autos (pp. 165-166)

* Autos designated "strategic export industry" thus receiving priority access to government credit and other export incentives
* Autos and components on restricted import list and require auto trade association's prior approval for import license (rarely issued)
* 60-95 percent local content required and foreign ownership limited to no more than 50 percent.

Computers/Semiconductors/Telecommunications (pp. 166-167)

* Declared "strategic industries" thus eligible for import protection, government support for R&D, credit allocations, tax breaks, exemption from military service for researchers.
* Import protection: small personal computers banned while medium and large computers are import-able; criteria for importing is developed by the Korean electronics industry association but is subject to government revision as market conditions dictate.
* Financing: long term, low interest financing and wide range of tax breaks. Government's technology development corporation (KTDC) finances development of new technologies, products and processes; Korean Institute of Electronics Technology (KIET) conducts basic research in semiconductors and computer systems.
* Top priority in benefitting from government loans and incentives extended to these industries.
* In 1982, joint R&D projects with domestic industry and government with government's share of funding at 60 percent, including government subsidies, preferential credits for R&D projects in mid-size computers and peripherals, cable telecommunications equipment, industrial electronics, medical equipment, computerized VCR, digital integrated circuits, and computer software.
* Government also has established training programs.

Heavy Electrical Equipment (pp. 167-168)

* Heavy electrical industry targeted for promotion and rationalization by government to encourage specialization and reduce duplication of efforts.

Machine Tools (pp. 168-169)

* Designated a "strategic export industry" with incentives to upgrade tooling and expand production: subsidized loans, tax exemption/reductions, import proection (Korean trade association approves imports after certifying no domestic manufacture), low interest loans to help finance renovation and expansion, series of special purpose government funds and loan programs to promote demand for machine tools.
* Government assistance in R&D equals loans to finance 70-90 percent of total investment including purchase of machinery equipment.
* Government created series of industrial complexes for more efficient support of manufacturing activities.
* Certain percent of local content allows firms to benefit from import restrictions, tariffs, rebates for raw materials in export goods, accelerated depreciation.
* 1982-86 Economic Plan -- provides for incentives to support growth and develop high degree of self-sufficiency in machine tools: calls for investments of $3.4 billion, credit for exporting machinery on deferred basis, small firms will receive government support and government will encourage product specialization.

Pharmaceuticals (pp. 169)

* Government forces foreign manufacturers to disclose proprietary information to sell drugs in Korean market -- this information is allegedly given to Korean manufacturers who then produce the drug cheaper.
* Process patent laws are easily circumvented with result that local producers need only change a process slightly when copying foreign drug to avoide breaking law.
* Government is encouraging rationalization/consolidation by reducing number of small firms and making large firms more competitive through tax benefits only conferred on those with Good Manufacturing Practice approval (GMP approval expected to be granted only to large firms -- GMP system to go into effect in 1985).
* Government plans to increase funds by 50 percent for R&D for private firms.

Shipbuilding (pp. 169-170)

* 1973 -- Korean shipbuilding was an infant, now it is one of the largest world suppliers.
* Low cost loans to producers, subsidies to export finance system, and encouragement of rationalization (70 firms have been cut back to 20) are tools used by government.
* Current 5-year plan will include an increase in financial resources available for exporting ships on a long term, low interest deferred payment basis.

Steel (pp. 170)

* Only integrated steel mill (POSCO) is owned 40 percent by Korean development bank, 30 percent by government, and 30 percent by commercial banks and private sources.
* Korean steel has emerged over past decade as fourth largest exporter attributed to government financial aid, alleged subsidies and other fiscal incentives, allocation of low-cost credit, foreign assistance and protection from imports.

[Note: major assistance was abolished in 1983]

Textiles (pp. 170-172)

* Non-tariff barriers and financial incentives to build up domestic industry and increase exports.
  [Note: these were reduced and removed by 1983]
* Import licenses are still subject to approval of trade association and transactions tend to be complicated and expensive.
* 1982 -- government began to encouarge new investments to improve quality in output/efficiency in product. Recently, government helped establish 2 industrial complexes for dyeing facilities and is planning 3 more by 1986.
* Low interest loans for modernizations and replacement of obsolete equipment.
* Textiles Modernization Fund (both private and public funding) will increase to $149.6 million by 1986.

MEXICAN POLICIES

Autos (pp. 219-221)

* Home market protection from imports -- imports completely banned in 1965 and high domestic content required
* Government incentives include: tax rebates; investment grants for auto part plants; duty exemptions on imports of machinery equipment, raw materials and components not produced in Mexico.
* 1979 -- Auto Decree -- industry to raise export revenue with help from government. 1983 -- de la Madrid administration amended 79 decree by requiring 60 percent domestic content for autos/ 70 percent for light vans and trucks, 80 percent domestic content for autopart inputs, reduction in number of basic lines/limits on number of models per line.
* Mexican owned truck assembly firms, dominated by government owned Diesel Nacional, were granted exclusive right to assemble trucks and produce diesel engines in Mexico.

Computers/Electronics (pp. 221-222)

* 1981 -- plan to reach 70 percent self-sufficiency by 1985
* Extensive government promotion of import substitution
* Fiscal incentives (tax credits for purchases and investments, duty reductions for component imports and exports incentives) and import investment restrictions requiring foriegn makers to use certain ration domestic content and gradually decrease ratio of imports.
* Imports controlled by licensing/selective government procurement
* Ban on foreign majority ownership of small business/personal computer manufacturing firms.
* Mainframe/minicomputer makers can get authorization for 100 percent foreign ownership if use high proportion of Mexican-made components.

Petroleum/Natural Gas (pp. 222-223)

* Wholly government-owned industry through PEMEX, Mexico's petroleum and gas monopoly
* Government helps develop other Mexican industries through PEMEX's procurement -- eg, TAMSA, large privately-owned steel maker relies on PEMEX purchases of more than 80 percent of steel pipe TAMSA produces.

Pharmaceuticals (pp. 224-225)

* Designated as of "strategic importance"
* Government hopes for Mexican production of 60 percent of domestic needs by 1988
* 1984 decree -- home market protection, support to Mexican labs, preferential financing, R&D funds, tax and other economic incentives, government credit agencies ased to finance more Mexican-owned firms, national labs favored in government procurement of basic drugs, and local content requirements of 20 percent raw materials to increase to 50 percent by 1987.
* Government encourages firms to export substantial share of production and make net contribution to balance of payments; requires firms to reinvest 4 percent of sales in R&D each year
* 1975 -- Law on Inventions/Trademarks" -- prohibits certain chemical products, including pharmaceuticals, from being patented in Mexico; also, all products fabricated in Mexico should be labeled with distinct Mexican trademark.
* Neither product nor process patents for pharmaceuticals are recognized in Mexico.

Steel (pp. 225-226)

- Government has designated steel a "strategic material"
- Government is deeply involved in production and marketing of Mexican steel and has devoted substantial resources to increase production
- Mexican steel prices have been controlled since 1956
- Three of "big 5" Mexican firms are wholly government owned
- Sidermex, a government entity, was established in 1980 to coordinate the management and marketing of state-owned firms; now, government run Mexican firms have 57 percent of domestic market while foreign do less than 3 percent of production
- US Commerce found affirmatively in CVD case that private makers benefitted directly from financial and tax incentives
- Despite debt crisis and foreign exchange shortage, capacity has continued to expand under government direction

TAIWANESE POLICIES

Autos (pp. 241, 266-268)

- Government designated autos a "strategic industry", making industry eligible for special tax incentives
- Local content requirements equal 70 percent for cars, 30-55 percent for light and heavy trucks
- Government encourages rationalization and combination of production facilities
- Government extends benefits to foreign firms for setting up joint ventures with Taiwanese firms: substantial tax and financial incentives
- Government underwrites loans for joint ventures
- Auto tariff will stay at 60 percent for next three years with reduction to 45 percent over 4-year period

Computers (pp. 268-269)

- Since 1980, active government promotion of domestic computer industry -- primarily computer peripherals, software technology and applications
- Government actively encourages foreign firms to invest in government built industrial park with substantial incentives. However, firms are asked to transfer technology to Taiwan, conduct research in Taiwan, employ Taiwanese nationals, and license Taiwan-developed technology to other Taiwanese firms.
- Government will favor domestic made in procurement decisions
- Firms producing certain related products will be eligible for special tax incentives, other benefits under the Statute for Encouragement of Investment. Firms also eligible for preferential loans, and the Bank of Communications is authorized to invest up to 25 percent directly in firms.
- Public laboratory (ERSO) helps private firms develop new processes and products

Electronics (pp. 269-273)

- 10-year development plan: increase value-added within industry, upgrade domestic product development capability, reduce dependence on foreign marketing/distribution organizations, increase proportion of domestically-owned firms, move toward higher tech, reduce reliance on foreign sources for components and raw materials.
- Government has designated products as "strategic": producers eligible for tax incentives, tariff rebates, preferential loans, assistance from public research institutes, lowered tariffs on key inputs.
- Government encourages private R&D through tax incentives
- ERSO to help firms develop new technology, acquire foreign sources, provide technical and information services
- Telecommunications: to receive $70 million for R&D, credit guarantee services, urged local leasing companies to give top priority to providing telecommunications industry with leasing and favored local producers in public procurement.

Machine Tools and Robotics (pp. 273-274)

* Government is steering domestic machine tool industry to high tech and encouraging expansion with consumption of domestic-made to increase to 80 percent by 1990 (currently at 60 percent) and exports to increase 15 percent a year.
* Both imported and domestic goods purchased by domestic manufacturers qualify for tax writeoff: imported goods = 10 percent, domestic goods = 15 percent writeoff
* Government encouraged 14 machine tool firms to form trade association to create standards for Taiwanese machine tools and conduct R&D on standardizing certain parts of machine tools
* Government will refuse to grant import licenses if product is available domestically
* Industry receives: loans for capital investment, tax incentives, support and funding of R&D projects, and encouragement to cooperate among domestic manufacturers
* 1977 -- government lab established a machine tool center to conduct research; technology is transferred to domestic industry
* Government lab has licensed robot technology from Unimation of US--lab adapted technology and created its own assembly robot; however, no domestic firm has yet licensed the government's technology

Petrochemicals (pp. 274-275)

* Given top priority in mid-1970s; as one of 10 major development projects, government invested heavily in petrochemical feedstock production facilities for the state-owned Chinese Petroleum Corp.
* Government encourage foreign/domestic investment in petrochemical facilities to serve Taiwan's plastics, textiles and fiber industries; to establish foreign joint ventures, foreign firms required to make substantial technology transfer to gain access to protected market
* Government imposed import controls on chemical commodities, required midstream companies to purchase at least 70 percent of feedstock from Chinese Petroleum Corp, required end-users in plastics and textiles to purchase certain percentage from favored midstream firms, both import permits and export licenses were required [Note: almost all petrochemical import restrictions were lifted in 1981 when oil price increase/global recession made domestic protection too expensive -- however, ban on imported plastic scrap imposed in 1982]
* State-owned Chinese Pretroleum Corp began building a naptha cracking plant to be completed by 1990 with expanded production of ethylene, propylene, butadiene, and aromatics -- when plant is running, CPC will be able to shut down two earlier plants

Pharmaceuticals (pp. 275-277)

* 1983 -- as part of new industrial strategy, government adopted the Good Manufacturing Practices (GMP) system which is a set of guidelines for the safe production of quality drugs used by world drug manufacturers. Requires submission of comprehensive documentation to Ministry of Health in order to obtain premarket approval. Imports of drugs which are already approved for Taiwanese production will be banned. Imports of chemical raw materials are encouraged to accelerate development of industry.
* Government is encouraging merger of firms not meeting GMP requirements
* Joint ventures, with firms both meeting GMP approval, will be given special 5-year loans
* Several public institutions are involved in R&D including research concerning chemical raw materials industry

Shipbuilding (pp. 277-278)

* 1970s -- government put shipbuilding and expansion of dry dock facilities near top of priority list. Government built a one million ton dry dock facility in late 1970s -- helped move Taiwan to 3rd largest world producer by 1982
* Largest shipbuilding firm is state controlled (China Shipbuilding Corporation) -- produces/repairs ships, manufactures ship machiner and steel, constructs whole plants for making fertilizer, petrochemicals, paper, pulp and steel
* Direct government participation in industry is heavy

Steel (pp. 278-280)

- 1971 -- state-owned China Steel Corporation benefitted from direct investment by government and wide range of tax and fiscal incentives including preferential loans.
- China Steel and smaller domestic firms are exempt from import duties, harbor duties, stamp taxes, sales taxes and education taxes on revenue generated by export sales; investment tax credits on new equipment are also available
- Government sets prices for China Steel's products

Textiles & Apparel (pp. 280-281)

- Import licensing/high tariffs on textiles and apparel (tariffs range from 35 to 100 percent, with most in the upper range)
- Sales/commodity taxes waived permanently and business taxes deferred for up to 9 years for textiles manufacturers
- Government encourages mergers, urges manufacturers to produce narrow range of products; export permits and membership in trade association limited to those government thinks are "behaving"
- Government wishes to avoid competition of domestic firms in international markets
- Government funds for export sales, promotion and assistance is channelled through centrally-run Council for External Trade Development
- Targets for growth in production and projected export levels are specified in offical annual economic plans
- All expansion palns in physical plant must be preapproved by government

APRIL 1986

CITE MEMBER COMPANIES

CONTROL DATA CORPORATION

CORNING GLASS WORKS

DUPONT/CONOCO

HARRIS CORPORATION

MONSANTO

MOTOROLA

OLIN INTERNATIONAL

TIMEX

UNITED TECHNOLOGIES

WESTINGHOUSE

Chairman GIBBONS. Our next witness is Mr. Black, representing the Computer & Communications Industry Association.

STATEMENT OF EDWARD J. BLACK, VICE PRESIDENT AND GENERAL COUNSEL, COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION

Mr. BLACK. Thank you, Mr. Chairman, and members of the committee for the opportunity to appear before you today.

I am Ed Black, general counsel and vice president for international affairs for the Computer & Communications Industry Association.

It is a pleasure to appear today before the committee to express CCIA's views on this very important legislation. We are a national trade association composed of over 60 manufacturers and providers of computer and communications related products and services covering the full sector of communications and related industries.

The companies involved in CCIA are represented at the chief executive officer level and thus, we have the valuable input of views of our CEO's into this important issue.

The companies in CCIA generate industry derived revenues in excess of $25 billion and employ over 400,000 people in the United States. CCIA member companies also export approximately 35 percent of their U.S.-manufactured goods, making them a significant positive contributor to our Nation's balance of trade.

The importance of our industry to the economic well-being of the Nation is growing and substantial. It is not only important in and of itself, but it is an industry which provides aid and assistance to other industries which are trying to compete in a very rigorous international competitive market.

We feel the success and vitality of our industry will be important to the Nation's overall economic and national security well-being.

We will not go into a lot of statistics today. You have heard many. But we would like to stress that although our industry is very competitive, very innovative, and we are a world leader—what we see in the future are very serious problems in the global marketplace.

We are concerned that these problems will erode our performance if they are not addressed. We are facing in a number of unfair trade practices which in certain nations are very severe at the moment. What we see is a pattern in which these unfair practices are being copied by a number of other nations.

The cumulative effect of such behavior could pose a very serious threat in the future.

There are some factors about our industry that are particularly important as we approach the international arena. In particular the short product cycle which we have makes us potentially vulnerable to intellectual property infringements, and it makes us vulnerable to trade laws which may be slow and difficult to implement quickly when damages are found to be taking place.

Also, given the nature of our product, wherein you have an installed base and you have customers who get very tied to that base, it is particularly important that we not experience a period of delay in going into new markets in Third World countries as they

develop. If other nations such as the Japanese companies get there first, they will be increasingly difficult to penetrate subsequently.

Of the overall problems that we face, three are most serious. One of them is the prime focus of this committee but I want to mention the other two.

One, macroeconomic problems such as the overvaluation of the dollar have plagued our companies in recent years as they have many other industries, two, U.S. export controls are of particular importance to our industry and have been a very major burden. We feel many of the controls provide relatively little benefit in their current form and way in which they are implemented relative to their objectives, and three, various foreign barriers to trade are serious problems. We will not go into these in great detail but they are: standards which are unreasonably restrictive governing procurement policies, demands on U.S. companies to transfer and license technology, intellectual property abuses, investment policies which carry conditions which are overly restrictive, tariffs in a number of individual market areas which are important to us, and various anticompetitive policies which in numerous forms and regulations have made it difficult to compete in third country markets partly because of the heavy protected cartel capability of competing nations within their own domestic market.

We feel that the trade policy which this country has carried out in the past several decades has unfortunately been inconsistent and not well defined.

We think that of the various legislative proposals which are pending, many of them have some merit but we wish to stress that without a vigorous and sustained commitment by an administration to the enforcement of the laws, we fear that many of the proposals which the Congress may implement will really not carry the kind of effective impact which we would like them to.

With that in mind, we would like to make a suggestion to the committee which—though it lacks tremendous specificity—relates to some mechanisms and procedures which we think could be plugged into the various substantive provisions the committee wishes to take up.

We think that the underlying policy goal of legislation should not just be to correct this part 301, or add something or do something to 201, but the overall goal which Congress and much of industry is looking for, I think, is a way to, pressure if you will, the administration to commit to consistent aggressive but reasonable actions on the international negotiating front.

We think that various kind of trigger mechanisms combined with sunset mechanisms are things which ought to be weighed by the committee as you look at different provisions.

There are a number of proposals which we really do not favor per se being implemented, but we would have a tough time opposing them as possible actions which would come into play if various trade targets are not met, or if the various methods of enforcement by the administration really wind up becoming ineffective.

Just one example of the kind of thing we envisage, would be that in the 301 area, where the debate is ranging over authority for the USTR versus the President, is that a certain loss of world market share might trigger a procedure where the decision authority

would shift. It would be primarily a trade decision you wouldn't have to go to Presidential review, and that USTR would obtain the discretion to act on its own.

That is not a specific firm proposal but it is one we would like you to consider.

The testimony mentions a number of important concerns we have on intellectual property, relating to antidumping, providing authority for the new trade round, and export controls. All these are the key legislative areas which we think do make sense to be included in the overall trade bill, and we urge the committee's attention to them.

Thank you very much for this opportunity to testify.

Chairman GIBBONS. Thank you, sir.

[The prepared statement follows:]

TESTIMONY OF

EDWARD J. BLACK

VICE PRESIDENT INTERNATIONAL AND GENERAL COUNSEL

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION

Mr. Chairman, Members of the Committee, I am Edward J. Black, General Counsel and Vice President for international affairs for the Computer & Communications Industry Association. It is a pleasure to appear before the Committee to express our views on the very important legislation you are considering.

CCIA is a national trade association comprised of over 60 manufacturers and providers of computer and communications-related products and services including large mainframes, mini and micro computers; semiconductors; peripheral equipment; software products; telecommunications equipment, systems, and services; word processing systems; and third party leasing and maintenance services. Company involvement in CCIA is at the chief executive officer level, and this provides valuable opportunities for peer level exchange of views on critical industry issues.

CCIA's member companies range in size from young, entrepreneurial firms to many of the largest and best known companies in both the computer and communications industries. Generally recognized as innovators in their respective areas of specialization, CCIA's members are credited with driving and shaping the industry via new technologies and products. Taken together, companies within CCIA's membership generate annual industry-derived revenues in excess of $25 billion and employ over 400,000 people in the U.S. CCIA's member companies export approximately 35 percent of their U.S.-manufactured products, making them a significant positive contributor to our nation's balance of trade.

The importance of the computer and communications industries to our economic well being is growing. Not only do this and related industries account for an increasing proportion of the U.S. economy, but they also provide new equipment, processes, efficiencies and solutions for many other segments of our economy which are trying to remain globally competitive. A strong and vital domestic industry able to compete worldwide is essential to overall American prosperity and to our national security.

Because of our industry's importance and growth potential we face very stiff competition from companies in countries which have decided that they must develop their own domestic industry. However, the costs of innovation, research and development, and retooling to produce newer generations of products are substantial and require most companies to develop an international market base in order to survive. We, therefore, face growing efforts to protect foreign markets.

The statistics on overall trade and for various segments of our industry have been presented to the Committee many times before. The important points to be derived from the many statistics we see are that our industry is still the world leader in most segments of the industry, and is likely to remain so in the near future; but that we face serious problems in the global marketplace which will continue to erode our performance if they are not addressed.

Some factors which distinguish and define our industry and our approach to the international arena are that:

* The pace of innovation, product development, and changes in product life cycle is much faster than that of most other industries;
* We are facing inevitable, long-term huge increases in domestic and worldwide demand;
* In most parts of our industry U.S. producers are equal to, if not superior to, most other competitors in price and performance, but are facing growing competition;
* Initial market entry and development of market share is especially important in our industry because, in addition to the general customer tendency to give repeat business, the financial and systems committment connected with major purcheses by users make it very difficult for users to switch suppliers; and

* A relatively high percentage of our industry's revenues, approximately 35 percent, come from exports, and these revenues are vital to our continued innovation and growth.

PROBLEMS

The situation we face as we try to compete in the international market is far less conducive to our industry's international competitiveness than we would like. We do not delude ourselves that policies pursued by the Administration, legislation passed by the Congress, or agreements reached with other nations are likely to radically improve the situation. However, we do believe there are substantial benefits which could accrue from a number of legislative changes and policy committments. As an industry, our primary goal in the international trade arena is to be as unencumbered as possible by foreign or domestic regulations, barriers to trade, tariffs or other financial distortions, and to foster a world-market system which is as open and competitive as possible. The question for us and for the country is how to become much more effective in preventing and curbing trade distorting practices without further distorting our own open market, when access to that market seems to be our only meaningful source of leverage.

Before discussing general and specific changes which we think should be made to existing law, I want to list the core problems we face directly affecting our ability to remain internationally competitive:

* Macroeconomic problems such as the overvaluation of the dollar in the past several years and the economic distress and accumulated debt of the LDC countries;
* Unrealistically broad and inefficiently administered U.S. export controls, which impose a burden in this area, which could be greatly eased without impairing the law's central goals;

* Foreign barriers to trade including:
  - standards that are unreasonably restrictive,
  - government procurement policies,
  - demands that U.S. companies transfer or license technology,
  - intellectual property abuses,
  - investment policies with conditions which are overly restrictive,
  - tariffs which are still high in some major markets, and
  - anticompetitive policies in competing nations which foster a secure home market allowing a brutally competitive approach in the U.S. or third country markets.

BASIC CONCERNS

As we have attempted to develop policy responses to these international trade problems we have reassessed and reaffirmed certain long held principles and premises. Among the most important of these are:

* An open, competitive, and unfettered domestic and international marketplace provides the optimum benefits to both producers and consumers - few countries allow such openness without major exceptions, including the U.S.;
* The tremendous prosperity and expansion of the U.S. economy is largely derived from our relatively open and competitive market;
* The computer, communications and other high-tech industries have especially benefited from the overall openness of our economy;
* There are serious economic and political pressures which threaten to move us toward a highly regulated if not protectionist world;
* The preservation and improvement of open and free markets cannot be accomplished by laissez-faire political and diplomatic activity; and

* We need an active, well understood trade policy which is consistent, coordinated, and dedicated to seeking out and eliminating distortions to open trade. Pursuit of such a policy must remain high on the list of the Nation's priorities.

It is the last point that we wish to explore more fully today. Those of us who deeply appreciate the widespread benefits of free and open trade have, understandably, tended to shy away from confrontational trade policies which carry the potential for retaliation. We do need to proceed with great care, but we have concluded that without a vigorous, consistent, and effective trade policy the pressures to move toward permanently regulated markets may be irresistible.

For several decades the United States has not consistently made trade matters and policy one of the Nation's top national priorities. On occasion it has reached such a level, but only temporarily. Partly this has resulted from competing visions of what our policy should be, partly from focusing on narrow and short-run issues, and partly from the regular turnover of top trade officials in the Government. However, the result has been the growth of a world trading system which is full of trade distortions and barriers.

OPTIONS

In CCIA's view, there are certainly some worthwhile improvements which can be undertaken legislatively to effect the substance of trade laws which I'll mention shortly. However, it is clear from the fact that many of the proposals before the Committee are frustrated reactions to either inefficient, inconsistant, or half hearted implementation of exising law and policies, that the underlying problem is one of executive branch will and tactics.

One general suggestion we would like to advance is, therefore, to seek legislation which has as one of its primary goals the encouraging, or more frankly pressuring, of the Administration to aggressively pursue effective international trade policies and to obtain meaningful results.

We envision a bill which would make use of both trigger mechanisms and sunset provisions to positively and negatively reinforce positive trade actions and results. The difficulty is to identify measures which closely reflect a specific area of trade and its problems and then to identify appropriate follow up actions. Overall trade deficit figures are probably too broad, but rapid changes in sectoral trade might not be. We have not attempted to choose among specific trigger measurements, but would be willing to work with the Committee to identify appropriate options.

With regard to what actions would be significantly upsetting enough to any Administration to continually encourage it to obtain results, the most likely candidate would be temporary suspensions of Presidential discretion. In the Section 301 area for example, a rapid loss of a certain amount of world marketshare in an industry might shift decision making authority to the USTR from the President. There are some linkages between different provisions of law which might also be of value in detering the most blatant and persistant violators of U.S. trade law and reasonable principles of free and fair trade. For example, repeated and gross violations of antidumping laws, intellectual property laws, or involvement in Section 301 cases could become grounds for assessing extra penalties against the

repeat violators. If the Committee explores various mechanisms to temporarily sanction an Administration or develops similiar sanctions on our trading partners, we wish to reiterate that our goal in supporting such measures would be to force a correction of behavior and that such levers should be designed to be temporary.

I would like to make some brief comments on some specific areas where CCIA believes legislative changes would be desireable.

INTELLECTUAL PROPERTY

This is an area of special importance to our industry in which new technology and developments are vital to continued growth and expansion. The more than $10 billion in estimated loss in U.S. sales due to the theft of intellectual property undermines our competitiveness. Section 337 of the Tariff and Trade Act of 1930 was intended to protect U.S. intellectual property from imports based on infringed patents. However, the economic elements which must be demonstrated before relief is given requires injury to be proven and the affected industry to be deemed efficient. We believe that the current economic reward to those infringing on U.S. intellectual property is so great that a more effective trade remedy must be created to deter such efforts and CCIA supports efforts to remove the burden on the infringed industry to prove injury and efficiency.

CCIA strongly supports efforts to make intellectual property issues priority negotiating objectives in various bilateral and multilateral negotiations.

SECTION 301

If properly administered, we believe this section holds substantial promise to enable the U.S. to promptly and vigorously try to eliminate trade barriers, and could be particularly useful in trying to stop those barriers that don't fit traditional patterns, and in blocking such behavior early. We applaud the Administration for its recent committment to use this trade tool aggressively and we applaud the Congress for so strongly encouraging the Administration to do so.

CCIA is sympathetic to any proposal which could legislate long term committment and backbone into Section 301 policy, but we are not overly optimistic that formal changes in scope of coverage or decision making authority as some have proposed are likely to work. Nevertheless, if specific inclusion of areas such as targeting might help, we support it. With regard to Presidential vs USTR authority, we are sympathetic to the transfer of prime authority for action to the USTR.

Automatic retaliation is not generally appealing, but there could be certain categories of cases or criteria under which automaticity could be utilized.

ANTI- DUMPING

This area of the trade law has not been a critical one for our industry, but we believe it may become more important in the future. We anticipate that current and future competitors may aggressively dump competing products in the U.S. with economic impunity, because of the solid economic base they have as to large and broad vertically integrated companies. Because of the need for constant infusions of capital for innovation, many companies would not be able to recover in the wake of a major dumping campaign, especially if combined with other trade restrictions. We urge that the dumping laws be refocused to effectively deter dumping, not just block it after it is underway. The most effective means of doing this would be :

* To impose penalties on firms found to be repeat violators, even though this would also require GATT modification;
* To consider compensation for injured U.S. industry;
* To allow "critical circumstances" to be found more easily; and
* To define "same class of merchandise" less restrictively as we evolve from generation to generation of product.

AUTHORITY FOR NEW TRADE ROUND

Both the current mechanisms and substantive rules to deal with unfair trade practices are inadequate. New unfair practices seem continually able to be devised to circumvent the current GATT system. Some of the problems we have encountered most frequently which should be addressed in a new round are standards, foreign cartels, government policies to foster industry development, performance requirements, government procurement, intellectual property, and various restrictive regulatory schemes. The GATT should be a positive force for promoting open and competitive trade but it often seems more like an obstacle that occasionally impedes sloppy, uncreative protectionist activity. We urge the Committee to ensure that negotiations focus on the basic operation of GATT and on the above problem areas.

EXPORT CONTROLS

Although it is not an area directly before the Committee, we want to mention briefly the subject of export controls. Any trade omnibus bill aimed at improving U.S. industry's international competitiveness should not ignore the problems we impose on ourselves with a "system" of export controls which is more restrictive and less efficient than necessary to accomplish its stated goals. We control more of our products than any other nation, we have more restrictive rules governing the proceedure we use to export and we have slow redundant and inefficient bureaucracies administering the law. The House last Congress attempted to significantly improve the Export Administration Act, but ultimately was unable to get key provisions included in final legislation. There are discussions now underway to decide which of many desireable changes to the export control law to seek in upcoming legislation. We strongly urge you to support the inclusion of industry backed changes to the Export Administration Act in a final House trade bill.

There are many provisions in the various bills before the Committee which we haven't commented upon here, but we will be pleased to work with the Committee on any provisions before it.

Thank you again for the opportunity to present our views.

Chairman GIBBONS. Next is Mr. Sayer.

STATEMENT OF R. WAYNE SAYER, DIRECTOR OF GOVERNMENT RELATIONS, GCA CORP., ON BEHALF OF SCIENTIFIC APPARATUS MAKERS ASSOCIATION

Mr. SAYER. Thank you, Mr. Chairman.

Mr. Chairman, I am Wayne Sayer, director of government relations for GCA Corp.

GCA is a manufacturer of analytical laboratory instruments, process instrumentation, robotics, and leading edge equipment for fabrication of semiconductors.

I am also chairman of the Scientific Apparatus Makers Associations, international affairs committee, and I am testifying on SAMA's behalf today.

I would like to summarize my testimony, outlined in a written statement provided to the committee, and I would ask that our statement be included in the hearing record at the conclusion of my remarks.

Chairman GIBBONS. Without objection, it will be.

Mr. SAYER. Founded in 1981, SAMA is the national representative of the high-technology instrumentation industry. Our 200-member companies manufacture and distribute more than 40,000 types of high-technology scientific instruments, process control equipment, and related laboratory products.

This equipment is used in research, production, quality control, and regulatory compliance. SAMA members have combined annual sales in excess of $14 million of which 40 percent are international. We have facilities in virtually every State and employ over 250,000 workers.

As our founding date indicates, SAMA is a creation of problems with international trade. Prior to World War I, all laboratory equipment and supplies were imported from Europe or inland. The United States was hard-pressed to replace this source of supply but the development of the domestic industry started at that time and as the role of science in society, politics, and world trade increased, the scientific apparatus business flourished.

What were glassblowing shops in garage operations became multimillion dollar corporations. However, 50 percent of SAMA companies are under $10 million. By the end of World War II, the U.S. scientific instrumentation industry had become the world leader and with the advent of the era of electronic application, U.S. companies dominated the world analytical instrument market.

There is evidence that this strong competitive position is eroding. It is clear that we have lost ground in international trade. At the same time, we are watching our own suppliers of technology, the electronics and semiconductor industries, struggle to stay in international competition.

There is no question that many factors contribute to this scenario. Macroeconomic issues include the Federal budget deficit and the relatively high cost of capital in the United States, other contributors to our problem include restricted access to some foreign markets, restrictive export controls here at home, and distortions created by unfair trading practices.

We believe that the committee's actions in the area of trade law reform could be keystone in helping to address unfair trading practices and market access overseas.

U.S. technological leadership is being challenged. Many foreign governments have designed comprehensive national industrial policies to stimulate economic development in major high-technology sectors.

The need to generate and utilize new technologies has caused governments to increase economic nationalism and protectionism. These are policies that can severely damage the international trading system, political alliances and global technological policies.

Consequently, SAMA members and other U.S. high-technology industries face a wide range of barriers and distortions to trade that are not adequately covered by international trade rules or else violate the letter or spirit of international trade commitments.

These include lack of intellectual property protection, closed government procurement systems, restrictive standards and certification processes, and investment performance requirements.

SAMA believes that U.S. trade policy should increase the access of U.S. industries to foreign markets. We particularly support U.S. trade law to strengthen the position of our trade negotiators. The recent MOSS talks with the Japanese were an excellent example of aggressive United States efforts to gain market access to a foreign market. U.S. negotiators worked closely with industry in developing clear and meaningful objectives. This collaboration between industry and government coupled with sufficient leverage resulted in agreed upon market access goals.

We are particularly pleased that the committee has included in its discussion draft a consideration of the Florence Agreement. This agreement allows duty-free entry of scientific instruments in appropriate cases. Unfortunately, the United States has consistently allowed duty-free imports while the European economic community has consistently disallowed the same.

SAMA believes that the omnibus trade legislation provides this committee with a vehicle to strengthen the tools available to our U.S. trade officials to protect U.S. commercial rights, in particular we support these legislative areas.

Authority for new trade rounds. Reform of section 301. Reform of section 201. Strengthening intellectual property protection. Enforcement of the Florence Agreement.

Mr. Chairman, in addition to reducing the Federal budget deficit, we must create an intelligent constructive and aggressive trade policy as a fundamental element in reversing our declining competitiveness.

Unless we participate in world trade we cannot hope to maintain a competitive edge. We urge the Congress to seize the opportunity before it to set a constructive tone for U.S. trade policy by creating legislation aimed at opening foreign markets.

As an industry born under the cloud of world strife, we have little interest in seeing our future evaporate.

We want to return to our role as a growth industry, providing innovation and employment at an even faster pace than we have in the past.

Thank you.

Chairman GIBBONS. Thank you, Mr. Sayer.

[The prepared statement follows:]

Statement of R. Wayne Sayer

on Behalf of the

Scientific Apparatus Makers Association

Mr. Chairman, My name is Wayne Sayer, I am the Director of Government Relations of GCA Corporation, headquartered in Andover, Massachusetts. My company is a manufacturer of analytical laboratory instruments, process instrumentation, robotics, biotechnology and leading-edge equipment for the fabrication of semiconductors.

I am also Chairman of the Scientific Apparatus Makers Association's International Affairs Committee and I am testifying on SAMA's behalf.

Founded in 1918, the Scientific Apparatus Makers Association (SAMA) is the national representative of the high technology instrumentation industry. Our 200 member companies manufacture and distribute more than 40,000 types of high technology scientific instruments, process control equipment and related laboratory products. This equipment is used in research, production, quality control and regulatory compliance. SAMA members have combined annual sales in excess of $14 billion. Forty percent of our industry's sales are shipped internationally and member companies employ more than 250,000 workers. Member companies have facilities in virtually every state, and employ more than 250,000 workers.

Barriers and Distortions in International Trade

Our technological leadership in the creating of tools for research and development and other high technology equipment is being challenged by conditions created by other countries industrial policies which are designed to create economic development in major high technology sectors. In order to achieve this objective, these governments have often resorted to policies of economic nationalism and protectionism. These policies are a threat to the international trading system.

The ability of SAMA members and other high technology industries to remain internationally competitive in the face of such policies is a central issue in the current domestic economic and international trade debates.

Technology is essential to the national economy and to our national security. High technology companies are the tool makers for other industries, providing the equipment to perform research and development, quality control and manufacturing needed to strengthen and maintain productivity, and the global comprehensiveness of all sectors. National security relies on high technology industries for sophisticated defense systems.

In order to capitalize on the benefits of the U.S. high technology community, we must depend significantly on having access of goods and services to foreign markets.

The R&D capital investment required to sustain technological advantages must be justified by large scale economies. If U.S. high technology firms are denied access to world markets, we will be unable to recover those R&D expenditures that produce technological advantage.

If the United States is to maintain its innovative capabilities and spirit, the high technology community must receive national attention.

SAMA companies are being denied access to foreign markets and foreign governments are not adequately protecting intellectual property rights. Particular elements in this scenario are:

A. Our trading partners national procurement policies constitute a major non-tariff barrier to trade in SAMA products even though this is treated by the GATT Code on government procurement.

B. Restrictions on foreign ownership, performance requirements, foreign exchange and other barriers to direct foreign investment inhibit tactical competitiveness and the efficient allocation of capital.

C. Tariffs remain a real barrier to trade in certain high technology products.

D. The vitality and innovation of U.S. high technology industries are greatly impaired by inadequate or non-existent protection of intellectual property.

E. Trade flows are interrupted by "targeting" high technology industries through governmental market access restrictions, formation of cartels, direct and indirect subsidies and other regulating action.

A U.S. High Technology Trade Agenda

The enhancement of international competitiveness and expansion of market opportunities should be the foundation for U.S. trade policy and implementing legislation.

The goal of U.S. trade policies and laws should be to reduce and eliminate foreign trade and investment barriers. U.S. legislation designed only to restrict imports should not be enacted.

U.S. domestic economic policy and laws have a significant bearing on our international competitiveness. The U.S. must promote the complete innovation cycle (R&D, production and distribution); lower the cost of capital for U.S. firms; and provide a fair regulatory environment that will encourage prompt commercialization and strong protection of technology.

Export Controls

SAMA believes that our own export control laws present the single largest trade impediment to our international competitiveness. To that end we would propose to amend the Export Administration Act to improve the re-exportation of U.S. companies as accessible and reliable suppliers. We would propose amendments to both the National Security and the Foreign Policy Controls of the current Export Administration Act. These changes are:

A. National Security Controls

1. Narrow the list of Military Critical Technologies to those technologies that are truly critical rather than merely useful.

2. Establish a better working definition of foreign availability of goods and technologies, and include West/West trade.

3. Simplify the re-export licensing process, including the establishment of de minimus sales rules and a bulk re-export license.

B. Foreign Policy Controls

1. Prohibit the retroactive application of export controls.

2. Prohibit the extraterritorial application of export controls.

MTN

SAMA believes a new round of multilateral trade negotiations is necessary and should be authorized by the Congress. These negotiations should include (a) market access; (b) improvement of the GATT's dispute resolution procedures; and (c) the expansion of the GATT to cover services, trade related investment issues, and protection of intellectual property.

Amendment of U.S. Trade Laws

SAMA believes that the U.S. trade laws should be amended to ensure that U.S. high technology industries obtain timely and meaningful trade and economic assistance. In particular:

A. Section 301 amendments are necessary to help reduce or eliminate foreign trade and investment barriers, intellectual property practices and other trade distortions. To this end, SAMA supports the transfer of authority to self initiate actions under Section 301 from the President to the U.S. Trade Representative (USTR).

B. SAMA believes that Section 201 should be amended to help U.S. workers and industries adjust more effectively to international competition (in those cases where an import sensitive industry could apply new technologies, its productivity and international competitiveness could be restored or enhanced).

C. SAMA also believes Section 337 (intellectual property) and related amendments are necessary to enhance the international protection of intellectual property. SAMA believes that our ability to establish and maintain world leadership in the commercialization of both product and manufacturing technology is dependent on adequate protection of intellectual property.

D. Nairobi Protocol

Title III of the discussion draft proposed that the United States implement the Nairobi Protocol to the Florence Agreement. Annex D to the Agreement and Protocol allows duty-free entry of scientific instruments in appropriate cases. When Congress last considered implementation of the Nairobi Protocol in 1982, the Senate Committee on Finance expressed concern about unfair practices of the European Community that harm U.S. manufacturers of scientific instruments. At that time, the Administration believed that it would be able to obtain an agreement with the EC insuring adequate reciprocity on the application of duty-free entry for scientific instruments.

Regrettably, the Administration has not been able to convince the EC to fairly administer duty-free entry of our products under the Florence Agreement. The Florence Agreement provides that scientific instruments may be imported duty-free if the purchase is made by a scientific or educational institution and if ipstruments "of equivalent scientific value" are not manufactured in the country of importation. The United States has administered duty-free entry under this Agreement in an open and fair way.

The net effect of the current situation are as follows:

Every foreign-made scientific instrument can now be imported duty-free by any non-profit U.S. organization with minimal effort.

Every U.S.-made scientific instrument which a European manufacturer might consider to be competitive with its own product line and sold to a non-profit customer will be or is already subject to full EC duties, including turnover taxes, freight and insurance.

Under these circumstances, SAMA has concluded that some concrete action is necessary to emphasize the concerns of the United States and to try to prod the EC into ending its unfair practices. We have drafted specific legislative language to encourage efforts to ensure comparable and fair administration of duty-free entry of scientific instruments by all major parties to the Florence Agreement. If any members of the Trade Subcommittee or staff have any questions regarding our recommendations, SAMA would be pleased to meet with the appropriate individuals at their convenience.

Anti-Dumping

SAMA is in support of language that would achieve the following:

A. In the case of a first offense of illegal dumping, the current statute would be strictly enforced.

In the case of a second offense of dumping at a margin greater than de minimus in the same product area in the last three (3) years, the administering agency would automatically find critical circumstances in the event of affirmative preliminary findings.

In the case of a third offense within a five (5) year period at a margin greater than de minimus, the Administration would be required to monitor imports by the offending company. If dumping is suspected, the Administration would immediately initiate a dumping procedure.

B. Dumping duties would be placed in a special fund to be disbursed by the USTR to injured companies for use in R&D benefits or worker adjustments.

C. The Administration would be directed to obtain international agreement for increased penalties for repeat offenders.

Conclusion

Mr. Chairman, SAMA greatly appreciates this opportunity to offer our position on these crucial issues. A constructive and aggressive trade policy is the cornerstone to reversing the erosion of our competitiveness in international trade. We urge the Committee and the Congress to establish new trade policies through legislation aimed at opening foreign markets.

Thank you for your kind attention.

Chairman GIBBONS. Last but not least, Mr. Regan.

STATEMENT OF TIMOTHY J. REGAN, DIRECTOR OF INTERNATIONAL PROGRAMS, CORNING GLASS WORKS

Mr. REGAN. Thank you, Mr. Chairman.

I am Tim Regan, director for international programs for Corning Glass Works. I would like to summarize my testimony for you which has been submitted for inclusion in the record. First I want to commend you and the subcommittee and staff for the work in the discussion draft, particularly in the areas of foreign industrial targeting and to section 337 amendments.

With respect to section 337, your provisions do essentially the same as those provisions of a bill introduced by Congressman Frenzel basically eliminating injury requirements from that law. My testimony will focus on the other issue, that is the issue of foreign industrial targeting.

My purpose today is not to tell you a chilling story about how targeting has adversely affected Corning Glass Works, although Corning faces competition in fiber optics from Japanese companies that have been the target beneficiaries of Japan's industrial policies. Rather my purpose is to relate to this subcommittee the seminal economic analysis financed by the administration on the issue of targeting.

As you know, the passage of the Trade and Tariff Act of 1984 included a provision by this subcommittee which requires the administration to undertake a comprehensive study of the problem of targeting. In my former capacity as the Deputy Assistant USTR for Industrial Trade Policy, I had the responsibility for ensuring that the administration fulfilled this congressional mandate. In fulfilling the mandate, the USTR contracted with Quick Finan & Associates, an ecomomic consulting firm, widely respected in business and academia, to study the effects of targeting on U.S. producers of 16K and 64K dynamic random access memory, or DRAM, semiconductors.

I want to describe this analysis and its policy implications to the subcommittee, because I believe this work did more to help us understand the economics of foreign industrial targeting than any other research done on the topic before.

Before presenting this analysis, I would like to describe how a typical targeting program works.

First, the domestic market is closed to imports and foreign direct investment which guarantees domestic producers the entire home market at premium prices.

Second, resources are transferred to the targeted industry through direct and indirect assistance from the Government.

Third, as production volume builds through domestic sales and industry costs decline, the industry is weaned off the protection and resource transfer. Soon its costs fall to the level where it becomes a worldwide competitor and is able to enter export markets.

And finally, when it is competitive worldwide, all the protection in resource transfers are eliminated.

Chairman GIBBONS. Let me ask you a question there. Let me interrupt.

Isn't this what happened to you in the fiber optics cable field with Japan?

Mr. REGAN. We are in the fiber optics business and we hold worldwide patents on fiber optics technology. The Japanese industry was built to a large extent through research and development done by the Nippon Telephone & Telegraphic Co. But, at this point in time, sir, we have not reached the point where Japanese imports are creating what I would consider a major problem for us in this market.

It is true that the Japanese are the second largest producers of optical fiber in the world, but we have been able to build a very competitive capacity on our own and at this point would not necessarily describe the Japanese as a competitive problem for us in the United States. But, that doesn't mean they won't be in the future.

Chairman GIBBONS. Did they develop their fiber optic program by targeting?

Mr. REGAN. Yes, sir, they did, through industrial policy, yes, sir.

Chairman GIBBONS. Could you interrupt your testimony and tell us as much as you know about that? How they did it?

Mr. REGAN. That has all been laid out in grand detail by the Department of Commerce in the study that——

Chairman GIBBONS. I know but we don't read all these studies. I just want to know, I want to hear you right now tell me what happened.

Mr. REGAN. Well, sir, you blind-sided me a little bit here.

Chairman GIBBONS. Maybe you are not the best one for me to ask that. If not, maybe there is somebody else on the panel that could tell me. I don't want to blind-side you. I just would like to get specifics on that.

Mr. REGAN. I can give you some specifics on our——

Chairman GIBBONS. Tell us what you know and then we can go on.

You know more than I do, I will tell you. Go ahead.

Mr. REGAN. There is a family of approximately six manufacturers of fiber optics in Japan, they have all got a very close relationship with the primary buyer in Japan called the Nippon Telephone & Telegraph Co., NTT.

Chairman GIBBONS. A state-owned monopoly trying to go private or something?

Mr. REGAN. Correct, sir, it is a state-owned monopoly. It was privatized last April but the Government still owns 100 percent of its stock. So effectively it is still Government-owned.

Chairman GIBBONS. They cannot get anybody to buy it, I guess.

Mr. REGAN. No, there would be a lot of people who would like to buy it, they just haven't found a way to sell it yet.

The fiber optic technology in Japan was developed in a research cooperative between NTT and these Japanese companies. The extent to which there were resource transfers to these Japanese companies I cannot comment on. I cannot give you specifics. I will try to find that and give it to you.

[The following was subsequently received:]

CORNING

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Timothy J. Regan
Director International Programs

April 25, 1986

The Honorable Sam M. Gibbons
House Committee on Ways and Means
2204 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Gibbons:

During my testimony on April 8, you asked me for information on how the Japanese Government "targeted" the fiber optics industry. The best source of information on this topic is a study published by the Department of Commerce in September 1984 entitled, A Competitive Assessment of the U.S. Fiber Optics Industry (hearafter referred to as the Competitive Assessment).

As I testified on April 8, a targeting program typically includes several components. First, the government identifies the industry in question as targeted. Second, the home market is protected from foreign competition. Third, resources are transferred to the targeted industry through a variety of domestic programs. And, in many cases, firms targeted in the industry are organized through government direction to cooperate in the production, marketing, and sales in a way which is not allowed under U.S. anti-trust law. Below, I will describe how the Japanese fiber optics industry fits this description of a targeting program using excerpts from the Competitive Assessment.

First, as indicated in the following excerpts, Japan's fiber optics industry has clearly been targeted for special attention by the Japanese Government.

> "The telecommunications industry has been subject to government targeting policies since 1956 when the Japanese government promulgated its first of three statutes known as the Extraordinary Measures Laws, which refined the structure of industrial targeting in Japan.
>
> The First Extraordinary Measures Law authorized the Japanese Cabinet to designate specific industries to be accorded preferential treatment and ordered MITI to draw up detailed plans for the promotion and concentration of such industries, known as "rationalization", and to instruct them to take

"concerted action." It provided legal immunity from Japan's Anti-Monopoly Law for activities conducted under MITI's direction, and committed the Japanese Government to provide financial assistance. The Cabinet designated telecommunication equipment as one of the targeted industries...

The Third law, Extraordinary Measures Law for the Promotion of Specific Machinery and Electronics Industries, known variably as PL 84 or "Kijoho", will remain in effect until June 31, 1985. It provides for designation of electronic industries as subjects for promotion including: 1) setting targets for R&D; 2) prescribing necessary levels of funding to implement overall program; 3) instructing MITI to develop elevation plans with specific production goals, R&D objectives, and rationalization targets; 4) ordering interfirm cooperation and specialization; 5) allowing tax benefits and loan sources; 6) directing concerted action with corresponding antitrust exemption; and 7) providing penalties for failure of compliance.

Under the Third Law the government set experimentation and research targets for fiber optic materials (emphasis added). "Elevation plans" (blueprints for rationalization) were developed containing estimates for the amount of money needed to reach those targets...

The [Third] law signals the financial sector and related industries that MITI has made a commitment to the development of the telecommunications industry, and that it will make every effort that funds required to see development goals established in the elevation plans will be available. The government has committed itself to spending $410 million from 1978 to 1984 for promotion and rationalization of the telecommunications industry." (excerpt from pages 20-21 of the Competitive Assessment)

As is also typical of a targeting program, the Japanese Government has protected the domestic market from foreign competition. This

protection took the form of discriminatory government procurement by the Nippon Telegraph and Telephone Company (NTT). NTT is a government controlled monopoly (recently privatized) which has paid Japanese fiber optics producers extremely favorable prices compared to world market levels. The details of NTT's preferential procurement are described in the following excerpts from the Competitive Assessment.

> NTT in controlling 50 percent of Japanese telecommunications dominates the development of fiber optics by procuring fiber optic material only from Japanese firms. Fujikura Cable-Works Ltd., Furikawa Electric Company, and Sumitomo Electric Industries Ltd. joined with NTT to develop a process for manufacturing fiber in an attempt to avoid patents held by different U.S. companies. NTT has already committed itself to procuring optical fiber from the above 3 firms with distribution to be by these 3 along with Hitachi, Showa, and Dainichi-Nippon.
>
> It is reported that NTT has made extensive use of an exception under the Government Procurement Code. This exception by the Japanese provides that procurement does not apply to what are called "cooperative associations", essentially small businesses. In the Government Procurement Code the United States made a similar reservation to the effect that the Code does not apply to "set asides" for small and minority-owned business. Some members of U.S. industry claim that the Japanese exception for cooperative associations is a loophole used out of proportion to the U.S. use of set asides...
>
> ...NTT has established a two-tier pricing system where it paid companies high prices under domestic procurement. These firms then charge lower prices for export. Published accounts by NTT indicate that in 1982, it purchased 588 km of optical fiber cable for $18 million. Since each cable contained 10 fibers, that means NTT purchased 6,000 km of fiber. This works out to an average price of $3.00 per fiber meter. During 1982 prices in the United States were well below $1.00 per meter and Japanese firms were offering to sell below the prevailing U.S. prices." (excerpts from

page 22 of the Competitive Assessment)

In addition to protecting the domestic fiber optics industry, the Japanese Government transfer resources to the industry to promote R&D. The extent of this resource transfers is reflected in the following excerpts.

> "Pursuant to the elevation plans [established under the Third Extraordinary Measures Law], MITI has set up subsidy programs. The first, run for the past 10 years by an arm of MITI known as the Agency for Industrial Science and Technology, has made 31 loans to private telecommunications firms as part of its "Important Technologies" program. Under this program MITI extends "hojokin" loans to firms undertaking approved R&D activity. These loans need to be repaid only if the research eventually is turned into profit-making manufacturing. MITI funds under the program have covered up to 40 percent of a project's cost while the firm must raise the remainder on its own. All resulting patents belong to the firms that performed the research (with a few minor exceptions). Of the 31 loans awarded to the telecommunications industry from 1973 to 1982, four have been in fiber optics (emphasis added).
>
> Another government program is the "Opto-electronics Project" under which MITI will have contributed $76 million to a research and development joint venture from 1979-86. Fourteen companies comprise the joint venture including Nippon Electric, Hitachi, Fujitsu, and Oki Electric. The Engineering Research Association of Opto-electronics Applied Systems was established to administer this project. In October 1981, the Association established the opto-electronics joint Research Laboratory (OEJRL). This is a 30-researcher, 1600 square meter facility within the Fujitsu Labs in Kawasaki. Active OEJRL participants include the member companies plus MITI's Agency of Industrial Science and Technology. The OEJRL has been contracted by the Japanese government to undertake the research. All project expenses will be covered by government funding

> in the form of consignment payments ("itakuhi") which need not be repaid. Research results will be made available by the government to related industries." (excerpts from pages 21 and 22 of the Competitive Assessment).

Finally, as is also common to a successful targeting program, the Japanese Government encouraged the cooperation among its fiber optic producers. The following excerpt describes the market organization in Japan.

> "The Opto-Electronic Industry and Technology Development Association (OITDA) has also been a beneficiary of government grants. MITI set up OITDA in July 1980 in order to improve lines of communication in the fiber optics industry. This trade association started with 11 major fiber optic manufacturers Total membership is now over one hundred with 20 percent of those being banks. Top technical people from member companies are assigned to two-year tours with OITDA. The association has an extensive program to aid the industry on data collection, feasibility and development studies, standards, research and development, international cooperation, and forecast of future markets and application. MITI has backed OITDA with an investment of approximately $80 million." (excerpts from page 22 of the Competitive Assessment).

As you can see, Japan's targeting program in fiber optics is quite extensive and well documented by the U.S. Government. I hope that this information proves useful to you in your deliberations on the trade bill.

Sincerely,

Tom Regan

TJR/kmr
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Chairman GIBBONS. I know we approached the Japanese market several years ago in an effort to penetrate that market and we were unable to get in there, largely because of the fact that the large buyer NTT, had these relationships with manufacturers in Japan which we simply could not break. We were told in the final analysis that because of a requirement which is basically a design requirement in Japanese fiber optics cable, they were unable to buy fiber supplied by Corning or cable supplied by United States companies with Corning fiber in it.

In your opinion was that just a dodge, or was it a real technical problem?

Mr. REGAN. In my opinion, sir, it was—I held this opinion when I was in the Government and I hold the opinion today, it was a dodge.

Chairman GIBBONS. Thank you.

Mr. REGAN. The fact of the matter is with all these successes in the MOSS talks in telecommunications, the United States hasn't sold any significant telecommunications equipment to the Nippon Telephone & Telegraph Co. Last year that company bought 4.2 billion dollars' worth of telecommunications equipment, approximately $131 million was purchased from offshore suppliers, and that $131 million has stayed constant for 3 years. That is a budget strictly controlled by the Government, by an entity which is still Government-controlled and it has not increased U.S. purchases.

I find it hard to believe that this is going to change.

Chairman GIBBONS. I am sorry I interrupted you. Would you like to go on.

Mr. REGAN. To capture these effects, and I am describing these effects in this marketplace of Japan's targeting in semiconductors, the study financed by the administration employed an imperfectly competitive dynamic mathematical model of the United States and Japanese producers of 16K and 64K DRAM's.

A perfectly competitive model used by the critics of targeting to show that targeting has no adverse effects should not be used because it assumes that there are no barriers to entry, there is perfect competition between like products, and there are many producers. These are all characteristics which simply do not apply to the worldwide semiconductor market, and in fact do not apply to most of the high-technology sectors which have been adversely affected by foreign industrial targeting.

The study demonstrates beyond any reasonable doubt that U.S. producers of 16K and 64K DRAM's lost 9 to 24 percent of the U.S. market during the period beginning in 1978, and ending in 1984, to Japanese producers as a result of Japan's foreign industrial policy practices benefiting the semiconductor industry. Or stated differently, if the Japanese Government had not targeted its semiconductor industry, the Japanese semiconductor producers' share of the United States market in these two types of commodity chips would have been 20 to 50 percent smaller.

The simple fact is, United States producers have lost significant sales and employment to Japanese producers in the United States market because of the targeting practices of the Japanese Government. The study financed by the administration showed that United States companies lost about $300 million to $750 million in

sales to the Japanese because of targeting. This translates into approximately 6,200 to 14,500 jobs that would have gone to Americans.

Now I would like to describe the model used in making these estimates. It is essential to understand the model in order to realize that the estimates are based on rigorous analytical methods. The model incorporates essentially three different and distinct models. A cost of production model which captures the dynamic effects of cumulative production volume in reducing costs through what is commonly called scale and learning economies.

A pricing model which relates the ratio of prices charged by Japanese semiconductor producers in the U.S. market to those charged by U.S. producers to four mathematically derived variables, including relative cost of production calculated in the cost of production model.

And finally, a market share model which relates the movement in the price ratio calculated in the pricing model to changes in Japan and United States producer shares in the U.S. market.

These models focus strictly on the 16K and 16K DRAM chip producers, and as is readily apparent, the models are linked.

To analyze the specific targeting practices, an assumption was made on how the removal of that practice affected one of the critical variables in either the cost of production model or the pricing model. The models were then run in a stepwise or recursive fashion to calculate the market shares of United States and Japanese DRAM producers each year for the year beginning 1978 and ending in 1984.

These simulated market shares were then compared to actual market share data to determine how much the Japanese producers' market share was directly attributable to the targeting practice in question. In every case, the removal of a specific targeting practice resulted in a simulated market share for Japanese producers below that which actually existed.

This analysis does not prove that targeting is always successful. Neither does it prove that targeting always adversely affects U.S. industry. Rather, it demonstrates that the policies of foreign governments which we call targeting can enhance the competitiveness of foreign firms in the U.S. market.

This enhanced competitiveness is derived from long-run reductions in cost that are in turn derived from learning and scale economies. And these learning and scale economies can be affected by governments.

These conclusions are consistent with those drawn by the administration in its report to Congress on targeting submitted last July.

Are these policies necessarily unfair? The answer is no. Sovereign governments have the right to assist in the development of their industries.

But the question the subcommittee faces is whether to allow the foreign industries that benefit from these foreign government programs to take market share, sales, and jobs away from U.S. firms and workers in the U.S. market.

Stated differently, should we allow the industrial policies of other nations to dictate the size and the shape of U.S. industrial sectors? I think the answer to that question is no.

If so, it appears that we have two options: One, to adopt an industrial policy of our own; or alternative to adopt trade policies designed to prevent foreign industries with a competitive advantage derived from government programs from selling in the U.S. market to the extent that it injures U.S. workers and firms. Since I do not think option 1 is viable in this country, it appears that option 2 is the only way to go.

If we are to develop a defensive mechanism, which I think the subcommittee has tried to do in its discussion draft, we must be cognizant of a couple of factors. First, foreign industrial targeting is not always successful. In fact, we can find more cases where it has not worked than it has. Hence, we need to make sure that the U.S. Government takes action at our border to offset the effects of targeting in only those instances where it is a cause of injury to U.S. firms and workers or an imminent threat thereof.

Second, the subcommittee should be aware that the administration does not recognize targeting as a problem, as was apparent with the position taken this morning by the administration against any attempt to make targeting on an actionable unfair trade practice. Consequently, I would suggest that a procedure should be built into the law to mandate action by the administration under certain circumstances, much like the countervailing duty and the antidumping duty statutes operate today.

Mr. Chairman, it is simply not enough to recognize in the law that foreign industrial targeting is an actionable unfair trade practice under section 301. We have to go further because we have a reluctant administrator.

I believe that the provisions of the Trade Law Modernization Act, H.R. 1950, introduced by Congressmen Guarini and Duncan, on injurious foreign industrial targeting are the most appropriate to deal with this problem. Title IV of that bill, entitled "Relief from Injurious Industrial Targeting and Unfair Trade Practices," establishes a procedure to ensure that offsetting action will be taken at the border only in instances where targeting proves to be injurious.

The findings of fact under this provision would be made by the U.S. Trade Representative, and injury determinations would be made by the U.S. International Trade Commission [USITC]. In instances where affirmative determinations are made by both parties, action would be mandatory. The injury requirement provides the relief mechanism to ensure that no action is taken when a targeting practice does not cause or threaten injury.

Thank you, Mr. Chairman. I am prepared to answer any questions the subcommittee may have.

[The prepared statement follows:]

TESTIMONY BY

TIMOTHY J. REGAN

DIRECTOR OF INTERNATIONAL PROGRAMS, CORNING GLASS WORKS

BEFORE

THE HOUSE WAYS AND MEANS SUBCOMMITTEE ON TRADE

APRIL 8, 1986

INTRODUCTION

Mr. Chairman, it is an honor to appear hear before the Subcommittee today to discuss an issue which I believe is absolutely critical to the industrial strength of our nation; that is, the need for trade legislation to offset the adverse effect that foreign industrial targeting is having in the U.S. market on domestic manufacturers.

My purpose today is not to tell you a chilling story about how foreign industrial targeting has adversely affected Corning Glass Works, although Corning faces competition in fiber optics from Japanese companies that have been the target beneficiaries of Japan's industrial policy. Rather, my purpose today is to relate to the Subcommittee the seminal economic analysis financed by the Administration on the issue of targeting. As you know, in the passage of the Trade and Tariff Act of 1984, this Subcommittee required the Administration to undertake a comprehensive study of the problem of foreign industrial targeting. In my former capacity as Deputy Assistant U.S. Trade Representative for Industrial Trade Policy, I had responsibility for ensuring that the Administration fulfilled this Congressional mandate.

The study done by the Administration for Congress has unfortunately failed to influence the debate on targeting. I say "unfortunately" because I believe that this work did more to help us understand the economics of foreign industrial targeting than any other research done on the topic. I hope that my presentation today will refocus the targeting debate on this important analysis.

The analysis which I will describe to you defies the critics of foreign industrial targeting. It provides definitive proof that industrial targeting by Japan has had an adverse effect on the U.S. semiconductor industry. It uses the most modern analytical techniques, and it has survived the scrutiny of some of the nation's best economists, both within and outside the Administration.

From a public policy point of view, it is important for this Subcommittee to understand this analysis in deciding whether to legislate a remedy for foreign industrial targeting. If, as the critics say, targeting does not work, a trade remedy for it would be a senseless waste of national resources. On the other hand, if this analysis can prove to the Subcommittee's satisfaction that targeting can adversely affect U.S. firms and workers in their own market, a meaningful legislative remedy to offset these adverse consequences would be justified.

TARGETING DEFINED

One of the very difficult problems we have in dealing with targeting is trying to define it. The fact is, this practice does not lend itself to a simple definition because it involves a whole host of government policies and practices which have the combined effect of making an industry more competitive than it otherwise would be in the absence of such practices.

From the analyses that I have read, I have concluded that foreign industrial targeting involves government policies that:

(1) close a nation's market to foreign competition by imports and/or through foreign direct investment; and

(2) transfer resources to the targeted industry.

The closed market component of targeting can be achieved through a variety of tariff and non-tariff measures. The transfer of resources can be achieved through direct subsidies, R & D funding, discriminatory government procurement, lax enforcement of anti-trust laws which enables companies to share R & D costs or rationalize production, and the identification of the targeted industry as an industry with

government backing which reduces the business risk for that industry and hence its capital costs.

Typically, a targeting program works in the following fashion. First, the market is closed which guarantees domestic producers the entire home market at premium prices. Second, resources are transferred to the industry through a variety of means as I have described above. Third, as production volume builds through domestic sales and industry costs decline, the industry is weaned off the protection and the resource transfer. Soon, its costs fall to the level where it becomes a worldwide competitor and is able to enter export markets. Finally, when the industry is competitive on a worldwide basis, all protection and resource transfers are terminated.

The Administration has devised a handy definition of targeting which may be useful to the Subcommittee. I would like to bring it to your attention. This definition is:

> "Any governmental or officially sanctioned policy or plan that as a stated purpose seeks to enhance, or as a foreseeable result will enhance, the competitiveness of a particular industry or industries relative to other industries in the domestic and or export market. Targeting practices may, among other things, subsidize R & D, reduce risk, decrease domestic competition, increase available capital, or increase the market size in order to create for the targeted industry a greater comparative industry than the industry would have absent Government intervention. Targeting does not include macroeconomic policies that affect the competitiveness of all industries in the national economy."

This definition was presented to the Subcommittee by the Administration in its July 15, 1985 report on targeting.

THE CRITICS

As you know, there are those in the debate over foreign industrial targeting that say it is not a problem. They are largely economists who argue that targeting simply cannot work. They ask: How can you create a competitive industry through protection at the border? This is a legitimate question to ask. U.S. experience with protection at the border has been dismal.

The critics go on to ask: Even if foreign industrial targeting works, why should we do anything about it when in most cases the so-called targeting policies of foreign governments are eliminated when the targeted foreign industry becomes competitive in the U.S. market? Frankly, the critics have another good point. And, as I noted earlier, the final stage of a targeting program typically is to terminate the policies that protect the home market and transfer resources to the targeted industry.

RESPONSE

I contend that governments can create conditions through protection at the border and resource transfers to make an industry competitive in the long run by reducing costs as production volume grows. Governments can derive a comparative advantage for an industry, or realize one for that industry more quickly than it otherwise would by adopting policies which take advantage of learning and scale economies that are inherent in certain industries.

I believe that the critics have used traditional economic tools in analyzing the effects of foreign industrial targeting. These tools are based on the concept of perfect competition where there are no barriers to entry, products have perfect substitutes, and there are many consumers and producers. In addition, these traditional models are static in that they do not capture changes in costs that result from increasing production volume over time. Using the perfectly competitive static model, I too would conclude that foreign industrial targeting is not a public policy problem.

But,I contend that we must use an imperfectly competitive dynamic model in analyzing the effects of targeting. It is precisely through the use of barriers to entry not recognized in a perfectly competitive model that governments transfer volume to targeted industries with high learning and scale economies. The result of such a transfer of volume can be a permanent, long term reduction in the cost of production for the targeted industry. This conclusion is based on the analysis financed the Administration last year in response to the Congressional mandate in Section 625 of the Trade and Tariff Act of 1984.

Under the direction of Congress, the Administration contracted with Quick, Finan, and Associates, and economic consulting firm here in Washington, to do a comprehensive study of the effects of foreign industrial targeting on the 16K and 64K dynamic random access memory (DRAM) segment of the semiconductor industry. William E. Finan, the principal author of the study, is widely respected in both industry and academic circles for his understanding of the economics of the semiconductor industry.

This study was based on an imperfectly competitive dynamic mathematical model of U.S. and Japanese producers of 16K and 64K DRAMS. It demonstrated beyond any reasonable doubt that U.S. producers of these semiconductors lost 9 to 24 percent of the U.S. market during the period beginning in 1978 and ending 1984 to Japanese producers as a result of Japan's foreign industrial targeting practices benefiting the semiconductor industry. Or stated differently, if the Japanese Government had not targeted its semiconductor industry, the Japanese semiconductor producers' share of the U.S. market in these two types of commodity chips would have been about 20 to 50 percent smaller.

The simple fact is, U.S. producers have lost significant sales and employment to Japanese producers in the U.S. market because of the targeting practices of the Japanese Government. The study, financed by the Administration, showed that U.S. companies lost about $300 million to $750 million in sales to the Japanese because of targeting during the 1978 to 1985 period. This translates into approximately 6,200 to 14,500 jobs that could have gone to Americans.

THE MODEL

Now I would like to describe the model used in making these estimates. It is essential to understand the model in order to realize that the estimates are based on rigorous analytical methods. The model incorporates three different and distinct models:

(1) a Cost of Production Model which captures the dynamic effects of cumulative production volume in reducing costs through what is commonly called scale and learning economies;

(2) a Pricing Model which relates the ratio of prices charged by Japanese semiconductor producers in the U.S. market to those charged by U.S. producers to four mathematically derived variables; and

(3) a Market Share Model which relates the movement in the price ratio developed in the Pricing Model to changes in Japanese and U.S. producers' shares in the U.S. market.

These three models focus strictly on the 16K and 64K DRAM semiconductor markets. I will describe them briefly now. A detailed explanation is in the study submitted to this Subcommittee last June. [1]

Cost of Production Model: This model is based on survey data of the relative cost of land, labor, and capital paid by U.S. and Japanese semiconductor producers for the base year 1980. Price indices are then used to calculate the relative costs of land and labor back to 1970 and forward to 1984. Annual changes in the cost of capital were developed using a widely accepted methodology originally developed by Hall and Jorgensen.

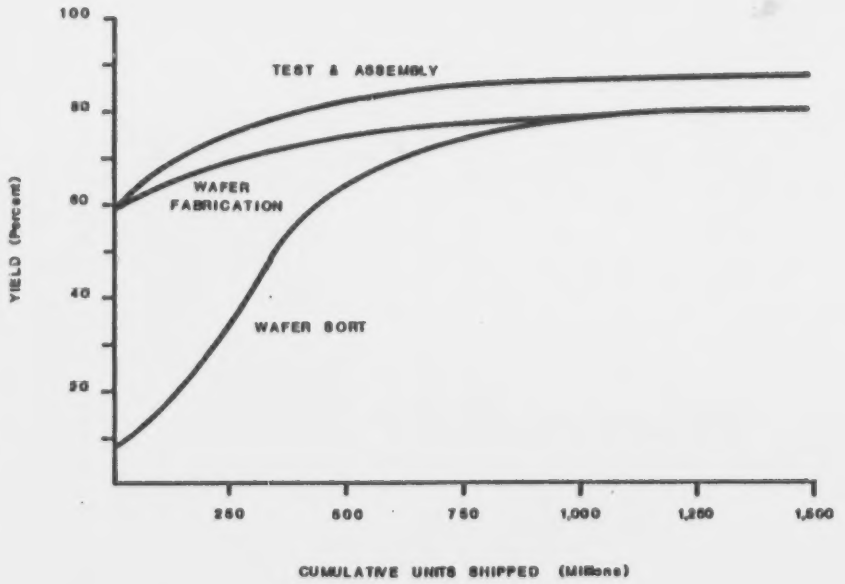
To capture the so-called learning and scale economies, these costs had to be adjusted for changes in yield. In the production of semiconductors, variable costs decline dramatically as cumulative production volume increases. As indicated in Figure 1, more than 90 percent of the results of the first stage of processing, the water sort stage, have to be discarded. These yields, however, improve very dramatically with cumulative production volume reaching, as indicated in Figure 1, nearly an 80 percent success rate when cumulative production (i.e., units shipped) reaches over a billion units. As is readily apparent, increasing production in a semiconductor business can substantially reduce costs. It is here where the dynamics of the industry are critical in making a targeting program work effectively.

In developing the Cost of Production Model, the yield improvement rates were estimated by the analyst based on previous experience with the

[1] For detailed explanation see An Analysis of the Effects of Targeting on the Competitiveness of the U.S. Semiconductor Industry, National Technical Information Service document number P885 - 213270.

FIGURE 1.

16K DRAM YIELD IMPROVEMENT BY STAGE OF PROCESSING



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industry and on industry data. Based on the estimates of yield improvements in the various stages of production, the cost of production per semiconductor was calculated for both U.S. and Japanese 16K and 64K DRAM chip producers. The costs for Japanese producers were then adjusted to reflect freight and tariff charges in order to derive a total variable cost for the production of Japanese-produced chips exported and sold in the United States.

From these cost estimates, a ratio was calculated of the variable cost of production for Japanese producers relative to the variable cost of production of U.S. producers. This ratio was then used as a variable in the Pricing Model.

The Pricing Model: This model was used to capture the imperfectly competitive aspects of the worldwide semiconductor market. The model is based on the following general assumptions about the semiconductor industry:

(1) there are barriers to entry because the semiconductor technology is difficult to master;

(2) firms react to the pricing decisions of their rivals;

(3) semiconductor products are imperfect substitutes, in particular, Japanese DRAMS are not perfect substitutes for U.S. DRAMS;

(4) the markets are segmented, specifically the Japanese market is closed to U.S. DRAM exports while both Japanese and American producers compete in the U.S. market for DRAMS;

(5) a higher demand elasticity for DRAMS in the U.S. market than in Japan; and

(6) DRAM production costs fall over time due to dynamic scale and learning economies.

The model attempts to capture the special characteristics of the DRAM market through a complex mathematical relationship. Specifically, the model relates the ratio of the prices charged by Japanese DRAM producers in the U.S. market to the prices charged by U.S. producers to four factors:

(1) the relative production costs between U.S. and Japanese producers as determined using the Cost of Production Model;

(2) the relative U.S. and Japanese market demand elasticities;

(3) the relative degree of substitutability between U.S. and Japanese DRAMs;

(4) producer estimates of how Japanese producers believe any price and or output change they make will be met by changes on the part of U.S. producers; and

(5) the degree of concentration of sellers in the Japanese and the U.S. DRAM markets.

The derivation of this complex relationship is beyond the scope of this testimony. However, it is presented in the study submitted to the Subcommittee last year.[2]

Market Share Model: This model simply relates the changes in the price ratio calculated in the Pricing Model to changes in the relative market shares of U.S. and Japanese producers in the U.S. market for DRAMs. A simple regression analysis is done which shows that over 70 percent of the variation in U.S. and Japanese market shares is explained by changes in the price ratio.

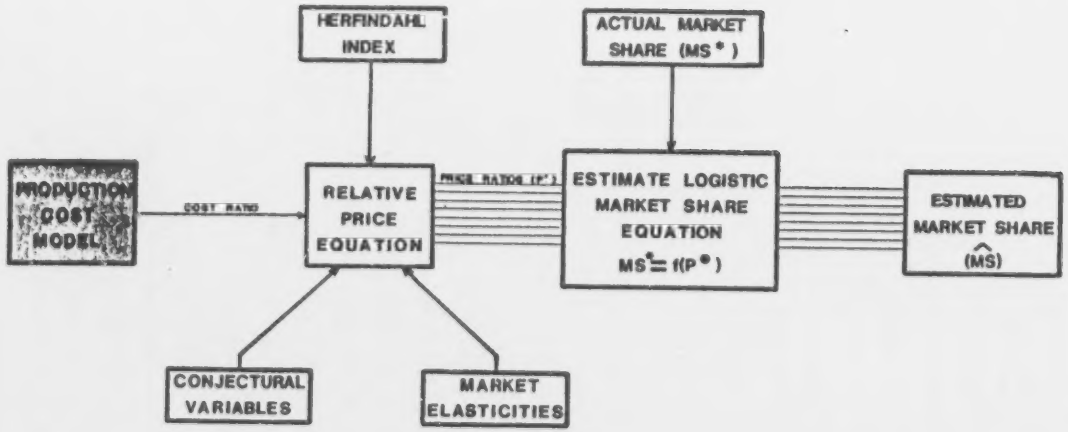
As should be apparent, these three models, the Cost of Production Model, the Pricing Model, and the Market Share Model, are all interrelated. For example, the cost of production calculated using the Cost of Production Model is a primary variable which determines the price ratio in the Pricing Model. And, the price ratio in the Pricing Model determines the market share calculation in the Market Share Model. These linkages between the models are critically important in understanding conceptually how the estimates were made. They are shown graphically in Figure 2.

To analyze the effect of a specific Japanese targeting practice, an assumption was made on how the removal of that practice affected one of the critical variables in either the Cost of Production Model or the Pricing Model. The models were then run in a stepwise, or recursive fashion, to calculate the market shares of U.S. and Japanese DRAM producers each year for the period beginning in 1978 and ending in 1984. These simulated market shares were then compared to actual

[2] See footnote 1.

FIGURE 2.

RELATIVE PRICE AND MARKET SHARE ESTIMATION



market share data to determine how much the Japanese producers' market share was directly attributable to the targeting practice in question. In virtually every case, the removal of a specific targeting practice resulted in a simulated market share for Japanese producers below that which actually existed.

For example, it was assumed that if Japanese home market protection were removed, a share of the Japanese DRAM market would have shifted from Japanese to U.S. producers. This in turn shifted production volume from Japanese producers to U.S. producers in 1978, the first year the model was run. This shift in production volume had the effect in the Cost of Production Model of reducing costs for U.S. producers and increasing costs for Japanese producers. This change in the relative costs of production affected one of the primary variables in the Pricing Model which in turn had the effect of raising the simulated price charged by Japanese producers in the U.S. market relative to the price charged by U.S. producers (i.e., the price ratio). This in turn changed the relative market shares in the Market Share Model, increasing U.S. producers' share in the U.S. market and decreasing the Japanese producers' share from actual levels for 1978. This change in relative market shares for 1978 changed relative production volumes in 1979 which in turn changed the relative costs of production, the price ratio, and the relative market shares for 1979 as well. Similar changes were projected for every year through 1984 in this recursive pattern. This procedure captures the dynamic effects peculiar to the semiconductor market.

Using this methodology, the effects of four different kinds of targeting practices were analyzed. These included practices which protect the home market from import competition, reduce the cost of capital, ease the enforcement of anti-trust standards, and provide R & D/financial subsidies. Market share estimates are calculated when individual targeting programs are removed. Estimates are then made when all of the targeting programs are removed simultaneously. It is under this condition that the estimates of a 9 to 24 percent market

share gain by the Japanese producers due to targeting is calculated. The market share estimates are calculated for seven sequential periods (i.e., 1978 to 1984) to calculate the changes in market shares from those that actually existed during this time period.

Policy Implications

This analysis does not prove that targeting is always successful. Neither does it prove that targeting always adversely affects U.S. industry. Rather, it demonstrates that the policies of foreign governments which we call "targeting" can enhance the competitiveness of foreign firms in the U.S. market. This enhanced competitiveness is derived from long run reductions in cost that are in turn derived from learning and scale economies. And, these learning and scale economies can be affected by governments. These conclusions are consistent with those drawn by the Administration in its report to Congress on targeting submitted last July.

Are these policies necessarily unfair? The answer is no. Sovereign governments have the right to assist in the development of their industries. But, the question the Subcommittee faces is whether to allow the foreign industries that benefit from these foreign government programs to take market share, sales, and jobs from away from U.S. firms and workers in the U.S. market. Stated differently, should we allow the industrial policies of other nations to dictate the size and the shape of U.S. industrial sectors? I think the answer to that question is no.

If so, it appears that we have two options:

(1) adopt an industrial policy of our own to assist the development of critical industries to the future of the United States; or

(2) adopt trade policies designed to prevent foreign industries with a competitive advantage derived from government programs from selling in the U.S. market to the extent that it injures U.S. workers and firms.

Since I do not think Option 1 is viable in this country, it appears that Option 2 is the only way to go.

If we are to develop a defensive mechanism, which I think the Subcommittee has tried to do in its discussion draft, we must be cognizant of a couple of factors. First, foreign industrial targeting is not always successful. In fact, we can find more cases were it has not worked than it has. Hence, we need to make sure that the U.S. Government takes action at our border to offset the effects of targeting in only those instances where it is a cause of injury to U.S. firms and workers or an imminent threat thereof.

Second, the Subcommittee should be aware that the Administration does not recognize targeting as a problem. Consequently, I would suggest that a procedure should be built into the law to mandate action by the Administration under certain circumstances, much like the countervailing duty and the anti-dumping duty statutes operate today.

Mr. Chairman, it is simply not enough to recognize in the law that foreign industrial targeting is an actionable unfair trade practice under Section 301. We have to go further because we have a reluctant administrator.

I believe that the provisions of the Trade Law Modernization Act (H.R. 1950) on injurious foreign industrial targeting are the most appropriate to deal with this problem. Title IV of that bill, entitled "Relief from Injurious Industrial Targeting and Unfair Trade Practices", provides for a procedure to ensure that offsetting action will be taken at the border only in instances where targeting proves to be injurious. The findings of fact under this provision would be made by the U.S. Trade Representative and injury determinations would be made by the U.S. International Trade Commission (USITC). In instances where affirmative determinations are made by both parties, action at the border would be mandatory. The injury requirement provides the relief mechanism to ensure that no action is taken when a targeting practice does not cause or threaten injury. In essence, it would treat foreign industrial targeting in the same way that subsidies and dumping are dealt with in current law. Mr. Chairman I commend this title to you as a provision for inclusion in your bill.

CONCLUSION

Mr. Chairman, in conclusion I would like to thank the Subcommittee for hearing this testimony. I believe that the work done by the Administration in the area of targeting deserves attention, and I recommend to the Committee that in light of the Administration's work, an aggressive stand be taken on this issue in your bill. Thank you.

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Mr. GUARINI [presiding]. Thank you.

Could you explain further why you think foreign industrial targeting should be mandatory?

Mr. REGAN. Why the administration should be required to take action?

Mr. GUARINI. Right.

Mr. REGAN. I think it should be required to take action only when they are proved to be injurious or in imminent threat of injury.

The reason I think it needs to be mandatory is, there is a lot of debate in this country, and in the administration there is a lot of disagreement, about whether or not this is a problem. I think that if you leave the flexibility in the law for the President to decide whether or not to take action, he simply will not take action because he doesn't recognize it as a serious problem.

Mr. GUARINI. So, therefore, the USTR should be the final decisionmaker. Would this depoliticize the targeting provision?

Mr. REGAN. Well, certainly that would be a step in the right direction.

I should note that I have made reference to the fact this would work like the countervailing and the antidumping duty law.

I should also note that the President doesn't make any decision in those laws. The Secretary of Commerce makes decisions. So, it seems if you create a procedure like that for targeting, it would just make sense also to take the final decision out of the President's hands, make it more administrative, and put it in the U.S. Trade Representative's hands.

Mr. GUARINI. Mr. Brennan, would you like to address that? Do you feel the same way?

Mr. BRENNAN. Yes, I do.

Mr. GUARINI. Do you think the USTR should be given the authority to make the decision?

Mr. BRENNAN. Yes, sir.

I think I would add to what Tim said on both those things, both the mandatory and the STR making the decision. From the mandatory standpoint, as I indicated in my brief remarks, you are really touching at the essence of the business process, which starts with planning. And what companies are doing is trying to look at markets at where are they going to put their money, where are they going to put their R&D moneys, where are they going to put their plant and other investment moneys.

Once they do that and they have committed it, they like to have some assurance they can earn a return on it for their stockholders. That is the way our system works.

Under our current system, over and over again they have been overrun, if you will, in many instances by foreign competitors who have the advantage of being targeted by their governments for support. There are tremendous erosions of market share. I am amazed at the amount of lost market share before we do anything.

Therefore, it seems to us if you want to have some sort of certainty where a business can feel that its government is concerned with the playing field and whether it is level or not, then you have to have some sort of mandatory response. I guess the most famous case is the poor Hudy Co. who spent hundreds of thousands of dol-

lars, went through this entire costly process, and it ended up in the Oval Office. And, as I understand it, the word was, how could I do that to my friend I can't sue?

That is not exactly a trade policy. A lot of people have it noted because it was on page D-5 of the Washington Post some days ago. Hudy is no longer in the machine tool business. They could no longer plan on their government responding to these practices.

On the question of whether or not it should be in the hands of the President or the USTR, I think we are kind of in a semantical swamp there. What we are looking at is having somebody in the Government, like the STR, making these decisions and not a high profile lightning rod type of thing like the President, who, every time he does something in this area, it is a foreign policy thing.

What we are looking at is foreign economic policy, and what we would propose is that the STR make his decision just as Tim said the Secretary of Commerce or Treasury makes decisions. We are talking about actions against other Governments, a subsidy done by another Government, and the Commerce Secretary takes that action. You don't hear too much flap about it. That is all we are trying to do, is bring it back to that situation.

But, as Clayton Yeutter said, his boss is his boss, and he is not going to make too many of these decisions his boss doesn't agree with. So, when you talk about depoliticizing, I think you are talking about taking some of the heat and light out of some of these decisions and making them more on a foreign economic policy basis.

Mr. GUARINI. If we have the President who is the head, the sovereign of our country, make these decisions, who is the head, the sovereign of our country, would it appear that it was an act against the sovereignty of another country; whereas, if we put it on an administrative level, with the USTR, it would take the sting out of that kind of position?

Mr. BRENNAN. I think that is the perception, that we are attacking the sovereignty of another nation. It seems to us this argument about targeting—we are reaching out for touching the sovereignty of another country—certainly another country has a right to do whatever it wants to do internally. But once you start engaging in international commerce, then you have given up a bit of that sovereignty by taking on other obligations.

Mr. GUARINI. What role do you think the Department of Commerce should play in the targeting provisions of our statutes? Where do they fit in, in your estimation? The word from the Energy Committee indicated that the USTR should not make the decision, but the Department of Commerce Secretary should make the findings and do the investigation, and everything was put under them and their jurisdiction.

How do you feel about whether or not it should be the role of the USTR or that the Commerce Department should play a lesser or greater role?

Mr. BRENNAN. My feeling is the trade policy decision should be within the USTR. I think it has worked well.

Mr. GUARINI. Should the Department of Commerce play any significant role?

Mr. BRENNAN. I think the roles are similar to what they have been all along. That is a very fine analytical role.

Mr. GUARINI. Where should the investigation be made, and where should the initiation and all the fact-finding take place?

Mr. BRENNAN. I would say on the initiation I think it should be up to the USTR. Whether the Commerce can help out in factfinding, I am not that much of an expert.

Mr. GUARINI. Should there be an injury test in targeting? Do any of you gentlemen want to address that?

Mr. BRENNAN. The original site proposal, I believe that original proposal did put forth an injury requirement. But our logic was as follows: that if we wanted to have a mandatory response—which I have said why we would think that would be appropriate—then the case should be serious enough and the industry have gone through enough tests to have an injury test. And once having passed that hurdle, then we would ask that a response be mandatory. This is more or less the logic of tying the two together.

Mr. GUARINI. Do all of you feel there should be an injury test because of a violation of GATT?

Mr. REGAN. I guess being on the other side, I spent 10 years in the Government hearing complaints by industries. You know, there is a certain amount of arbitration involved in trying to decide exactly how bad the case is.

I think in many cases the Government plays a key role in making that determination. To be entirely honest with you, sir—I can probably find more cases where targeting has been woefully unsuccessful for a foreign government than has been successful. I think it would be a mistake from a public policy perspective to require action, particularly trade action, at the border in instances where targeting clearly is not hurting anybody in the United States or is not a threat of imminent injury to someone in the United States.

Mr. GUARINI. Then we should wait until we get injured or damaged before we do anything, even though we know it is clear that they have targeted particular industries?

Mr. REGAN. I will give you a case in point. The European Community has targeted the semiconductor industry for many years. The French Government has for many years. They have a 17-percent tariff on imports. It is a targeting program in every sense of the word.

For the United States to retaliate against that targeting practice would not make sense because, to be entirely honest with you, it is not adversely affecting anybody. No one is claiming that it is.

It seems that the concept of threatened injury is an important one, to get to your point, and I think that is where your bill describes a threat of injury. I think you have to at least go through a minimum—if you will, a minimum standard of a threat before action is taken, particularly at the border.

Mr. GUARINI. Thank you.

Anybody want to add anything?

Mr. BLACK. Yes.

Mr. Guarini, I do not, unfortunately, share my colleague's opinion of the benefit of automatic mandatory action. I think the

nature of targeting practices is very adverse, as I think we have just made clear.

I do see instances where targeting should be aggressively pursued as something that the United States, in negotiations, should go after very strongly. Because of that, I do not think it is as important, as critical, that we have an injury.

Certainly, we should not waste our time on targeting efforts that are not having any impact, and that is a public policy issue I think the administration would easily adhere to. I do, however, think that when we see targeting practices at an early stage, I think we need to be able to move.

With regard to section 301—I think the administration should be urged, when they see certain targeting practices and when there is some reasonable predictability of it having an important impact on U.S. trade interests, that they should move very aggressively.

Mr. GUARINI. So, the threat of injury should be significant?

Mr. BLACK. Yes. I think that is a pragmatic test—I don't think that is a legal test. That is the benefit of 301.

Mr. REGAN. That is an important point.

In almost every single case, a targeting program started with a form of market protection, home market protection, which seemed pretty innocuous many years ago.

For example, the Japanese semiconductor market was pretty much protected up until 1976, and no one was too concerned about that. Yet, today we find in our mathematical models that protection created an ability for those industries to build volume and reduce cost to become competitive.

It is a difficult issue, and I think you have to stretch the threat of injury pretty far to get at those kinds of problems. But I think he is right. The best way to solve targeting is to negotiate it away early.

Mr. GUARINI. There is a difference in the system, too. They can spend 10 years taking losses and tolerate it, where our businessmen have to produce every year if they want to stay the CEO of a company.

Thank you, gentlemen.

Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman.

I want to welcome the panel.

I would like to start off with you, if I may, Travis. I think we have some basic agreements on international property rights. That, to me, is one of the weakest aspects of the law, not having swift and punitive action invariably, when somebody engages in theft of property. That is actually a theft of private property, so anything that can be done in that category I am all for.

Also, I am for speeding up the decision process in 301 cases involving dumping; and I agree with you that there has to be some way of increasing the penalties for those repeat offenders.

I have some questions, though, and I would address these to everyone on the panel. I am not sure what existing law is when you have one of those cyclical downtrends with regard to domestic manufacturers and you have an excess of inventory and a short generation life, for example, in semiconductors.

What do American manufacturers do?

Mr. MARSHALL. You mean so far as reducing prices during cyclical downturns?

Mr. CRANE. Do you ever undersell the cost of a product unload inventory when you have a whole new generation coming on?

Mr. MARSHALL. That can happen, yes. I would say the history has been, though, that the price leadership has been by the Japanese rather than the American companies. They have generally followed the Japanese down the pricing curve.

Mr. CRANE. Except, I meant if you were just selling in a purely domestic market here. Let's assume you weren't—you are unloading inventory during a downtrend and you are just trying to get rid of this inventory, because you have a whole new generation coming. If those sales were confined strictly to our own market by American firms working here in the United States, are there any penalties under existing law for a company dumping its product that way?

Mr. MARSHALL. A product has to cross an international border to be dumping. But if it is predatory pricing, it would be against the law.

Mr. CRANE. That is what I meant.

What are the legal remedies if you know you have overproduced and you see that you are going to have excess inventory to absorb if you don't unload it? Is it predatory pricing if you come in below whatever your cost of production was?

Mr. MARSHALL. No. It is predatory pricing if you are attempting to destroy a competitor through underpricing him. If you can prove you are unloading inventory, you would not have predatory pricing.

I am not an expert antitrust lawyer, but that is the way I would understand it.

Mr. CRANE. Let me ask you the further question, what if it is an international exporter and he is not out to kill a competitor? I mean, that is not his conscious intent, because now we are getting into reading what is inside somebody's mind, it seems, unless you have the minutes of the board meeting where they said, "our real objective is not just to unload excess inventory."

Mr. MARSHALL. If we sell that product in Canada below cost, or any other country below cost, we are dumping in that country.

Mr. CRANE. That is the sole determinant once you get beyond our borders, unloading excess inventory below your cost of production.

Mr. MARSHALL. Almost every country has a law similar to the U.S. law.

Mr. CRANE. That is not unfair, it seems to me. I am not in disagreement with that. I was just curious about what we did domestically.

That leads to the next question, and it has to do with remedies. I am not sure that compensating domestic manufacturers is as effective a remedy as denying market access would be to someone who engages in those practices.

What is your feeling? I mean, in other words, if a company from abroad was caught dumping here once, and that case was proven, and you said if you do it again you are going to be denied access to the U.S. market for a whole year, which do you think would be a greater deterrent: first, just penalizing them in dollar terms or put-

ting duties on at the border to offset the differential between what he sold his product for and the cost of production; or second, denial of access, especially in a semiconductor industry with that short generation span?

Mr. MARSHALL. I think denial of access would eliminate dumping. If we had that for, say, the third time that the company dumps in the United States, I think they would not dump the third time.

Mr. CRANE. If they are dumping, why wait a third time?

Mr. MARSHALL. That is a good point. I guess the only reason for that would be to be sure that a company really understands the dumping law, and the dumping law in itself really has very little penalty connected with it.

Mr. CRANE. I think that is one of the big problems.

Mr. MARSHALL. It is primarily there to have them charge the correct price. If a company ceases dumping and starts charging the correct price, they no longer have to pay the duty after the first year, I believe. So, there is no penalty for dumping if they quit dumping, is what it amounts to.

Mr. CRANE. That is why it seems if they didn't understand it the first time, you can give them a pass. You know everyone is guilty of one mistake; but after they have gone through the process and they understand what is defined as dumping, it would seem to me by the second offense the penalty should be denial of market access, and especially, as I say, in the sophisticated high-technology fields where denial of access for a stipulated period of time would serve as a greater deterrent.

The good Lord said turn the other cheek. He didn't say turn it three times. A second dumping offense and you are out for a while.

Anybody else care to comment on that?

Mr. BLACK. If I could, I think it is very tempting to explore denial of market access. However, we would really have a very tough time moving to that point. We think compensation to injured industry, while not as effective—and there is no doubting denial of market access would be effective—it has other consequences which I think would create further distortions of the trade patterns which we would like to see prevalent, and some very serious ones in a number of industries.

We do support charging repeat violators with some extra penalties, and I think compensating injured firms. I think those are significant steps which, if undertaken, could well be fairly effective in dealing with the problem.

Before going to a market access limitation, I really think we should explore some lesser remedies. Certainly, in the computer and high-technology fields in general, there are all kinds of peripherals—not just semiconductors, but parts and components which are manufactured in a variety of places. There is a lot of cross-trade, a lot of what we export is for assembly elsewhere, as well as import. It is a very integrated trading industry, and that kind of imposition of barriers on components coming in could well make the overall industry very uncompetitive in certain ways in producing its final product.

Mr. CRANE. I feel as strongly about this, almost, as theft of intellectual property. Right is right, and wrong is wrong. If this is the international standard and everybody accepts it, trying to figure

out how to end that practice as quickly as possible, I think, requires a penalty that is going to cause a person to think long and hard about flirting with the possibility of getting caught doing that again.

It is like breaking and entering. It is in the same category, it seems.

The market distortions of denial of access that would be created are ones that any offending company has inflicted upon itself.

Have we had manufacturers here in the United States found guilty in other markets abroad of doing the same thing, being repeat offenders?

Mr. REGAN. American companies have numerous antidumping actions taken against them. Whether or not they are repeat offenders, I do not know.

Mr. CRANE. I was curious about what kind of penalties these other countries have imposed on our dumpers. Are they more stringent than we have been in response to dumping?

Mr. REGAN. We are all bound by the same international commitment, and that is to take an action which is necessary to offset the margin of dumping. This commitment is embodied in Article 6 of the General Agreement of Tariffs and Trade.

Mr. CRANE. Is it left up to the individual country to determine what action is taken, or is that spelled out?

Mr. REGAN. The level of the offsetting action is determined by the individual country depending on the margin of dumping that it determines exists.

Mr. CRANE. Now, that gets into another category of problems, it seems. If you are going to award civil penalties, for example for dumping, how much of it do you know you can directly attribute to anticompetitive dumping practices versus other intangibles such as a better marketing technique, the economies of scale? Can all of these things really be defined properly?

Mr. REGAN. I haven't given much thought to this provision. I didn't comment on it in my testimony.

Mr. CRANE. Can any of the rest of you help me on this point?

Mr. MARSHALL. I think—a couple of things I would like to comment on. One is, the idea of having two chances before the market access denial would take place would be in consideration of those U.S. companies who are customers of a company who is dumping, and if a supplier has dumped a couple of times, I think that is pretty good warning that they should be very careful. That would be another reason for that company not dumping a third time. But it would give warning to customers. That is a personal opinion; not an SIA-generated one.

In the area of how the dumping margin is obtained, there are two ways of doing it. One is to ascertain the price which is charged for the product in the originating country, if it is sold for less in the United States than it is sold for in Japan, they are dumping. If you cannot ascertain the price that it is sold for in Japan—and that is frequently true—you can reconstruct the cost.

And there is a provision in the Dumping Act that would allow you—you have your labor, your material, et cetera. It includes everything, including a profit and the transportation cost and any duty. All of that is figured in when a dumping case is——

Mr. CRANE. Would you yield for just a second?

In determining the profit component, is there some set profit?

Mr. MARSHALL. Ten percent.

Mr. CRANE. Why?

Mr. MARSHALL. That is in the rules. I do not know why 10 was chosen. It is in the law. I don't know why 10 percent was chosen.

Mr. CRANE. Do you think that is a defensible ingredient of the law? For example, the Japanese profit margin on automobiles runs from about $75 to about $350. Ours starts at $1,000 per car. In other words, in the production of automobiles, the Japanese are working on a much tighter profit component. I just wonder about the rationale that defends a 10-percent profit.

What if a company wants to work on big-scale orders?

Chairman GIBBONS. That is what Russell Long put into law, and that is why it is there. I don't think it ever got debated. We never could find any debate. In fact, we never could find it in the law. One day it just showed up. I am not joking. That is the way it got into law.

Mr. MARSHALL. I would add this on that subject: If the company that is dumping wants to supply the information, the price for which they sell the product in the home country, they don't have to go through that reconstruction, and the 10 percent would not be relevant. It is only if they refuse to give any information and you are incapable of getting it any other way, then that 10 percent is thrown in as part of the constructing of cost.

Mr. CRANE. Mr. Brennan, I would like to ask you a question on some of our current practices. Were you sympathetic with voluntary restraints on the import of Japanese cars in the United States?

Mr. BRENNAN. Personally, yes. I heard your colloquy with Mr. Kirkland earlier today and the question of the voluntary restraint seems to me you have to put it in the perspective of a situation of the time which as I recall foreign cars accounted for about 25 percent of this market and it was not until then, which, as I said, kind of surprises me, we wait that long, that we negotiated voluntary agreements.

I don't know what the alternative would be. I assume it might have been legislative quotas.

Mr. CRANE. How about the quotas on steel imports?

Mr. BRENNAN. Again, I believe they were at a point where they proved through our laws that those quotas were appropriate.

Mr. CRANE. Are you in support of textile quotas?

Mr. BRENNAN. How do you mean?

Mr. CRANE. We have pretty rigid quotas on textile imports into the United States.

Mr. BRENNAN. We, as other countries do. We are engaged in a multifiber agreement, right.

Mr. CRANE. Our current legislation that cleared the House went vastly beyond MFA agreements. In fact, it violated MFA and about 40 bilateral agreements. It was a unilateral action that the House was taking.

Were you generally supportive of that bill that cleared the House?

Mr. BRENNAN. I am not an expert on it. My knowledge is kind of newspaper knowledge. It was my understanding a lot of those countries had violated the MFA agreement and exceeded their exports to the United States and the textile industry was responding trying to bring that thing back in line.

That is my impression. That may not be the facts.

Mr. CRANE. The reason I asked you this line of questioning is does that not qualify as home market protection?

Mr. BRENNAN. Oh, sure. We all do it. It is legal under the GATT to do it. It is legal under our laws to do it in certain instances.

Mr. CRANE. In the tax bill that we just had clear the House unfortunately, and hopefully it will die in the Senate, we eliminated investment tax credits, and accelerated cost recovery and right now R&D credits are still in limbo. Are you generally sympathetic with those provisions of the current Tax Code, with the extension of the R&D tax credit, which I would like to see. I would also like to see the elimination of all business taxes, period. That would create the best free field with no favors.

But given this Byzantine code we have, were you generally sympathetic with the investment tax credit as a component, accelerated cost recovery and R&D tax credit?

Mr. BRENNAN. Again, I am not an expert. I would like to speak personally.

My reaction was from an international competitiveness point of view and I believe there are some studies submitted to this committee that indicated if you compared our Tax Code with that of other countries the two or three things that helped enhance our competitiveness were investment tax credit and accelerated depreciation.

So it seems from an international point of view we are zigging when we should be zagging.

Mr. CRANE. I couldn't agree with you more. The only reason I raise that question is does that not constitute a tax benefit to capital intensive industries versus labor intensive industries?

Mr. BRENNAN. If I might step back and reflect on your comments and colloquy with Mr. Kirkland and these here, it seems we are trying to look at do we have an industrial policy versus other countries. I think the answer from my point of view is no, sir, we do not. But if you have any law that affects business that is an industrial policy.

But we are not talking about that. We are talking about the foreign government involvement in the business process, direction of resources.

Mr. CRANE. Doesn't that constitute Government involvement in the business process because we have opted in favor of capital intensive industries under the code? I am not faulting that.

Frankly, I don't think you can equate United States Steel, General Motors, and Boeing with K marts and McDonald hamburger stands, but it is a Government policy to give preferential treatment to certain kinds of industry in the United States versus other kinds of industries.

Mr. BRENNAN. I left an important phrase off what I just said which is Government policies to enhance the international competitiveness. We don't have that many policies in that regard in this country.

Mr. CRANE. Except those were calculated in no small measure to guarantee we would survive in basic capital intensive industries which is why I hate to see the Tax Code revised in a way that impairs that.

I agree with you. We are zigging when we should be zagging. It is directly contrary, that whole tax bill to capital formation, to trying to provide those kinds of incentives through the code to basic industries upon which the Nation would have to survive if, god forbid, we went to war again.

But it does constitute Government-determined policy of tax benefits to some industries at the expense of others. I mean when GE came in and made their $6.5 billion in profits, and got a $283 million tax rebate. K mart says we are paying 46 percent taxes. I know Don Regan's argument about creating that level field but I took issue with Don Regan when he first proposed it back 1 year ago last November.

Let me move onto another category. This has to do with something that the Japanese were very up front about when we were over there in 1981 with the American Productivity Center and it had to do with a polite criticism of our antiquated antitrust laws.

When asked what they were talking about they pointed out that they bring the heads of like industries in and say, "OK, where should we be going on R&D effort," and they farm it out. Each one takes a section, whereas here they are all working in competition and once they make a breakthrough they hand in a patent.

They said "You are living in a different market than 1880. Then you were just really entering the industrial revolution and now you are dealing with world markets." To this point, all of us registered an affirmative response, "Yes, you are right."

We have stupid antitrust laws in this country. Is that your general feeling?

Mr. BRENNAN. Are you asking me, sir?

Mr. CRANE. Do any of you think our antitrust laws are totally antiquated and nongermane in the world market situation we find ourselves in today?

Mr. BRENNAN. Again, not being an expert, I will give you my gut reaction is historically, culturally, and I would include that corporate culture, I think most of us who have been in business for the last x number of years are and understand the value of our antitrust laws and probably a certain kind of cooperation of setting prices for export through an export cartel I think we would be innately uncomfortable with doing that.

Mr. CRANE. I was thinking more in terms of the Japanese practice. Once we asked them who gets the patent and they said, "who cares." Once the breakthrough has been made then they get proprietary on their product line.

Let me ask Travis a question. The disturbing thing out of that meeting that Bob Galvin was instrumental in setting up most recently in California, was that chilling commentary by a Government official that they didn't have anyone present because they weren't sure it was not violating the antitrust laws.

I applaud Bob's initiatives in that effort and I think more of that should be promoted, not less. If they honestly think somewhere down in the bowels of justice that that is even flirting with a viola-

tion of it I think we have created an intimidating climate with regard to businessmen sitting down together and discussing aspects of business.

I am not talking necessarily about collusion. I will join with you and we will lock up this market here and do our targeting within the confines of the business community. What is your feeling, Travis?

Mr. MARSHALL. Certainly adequate antitrust measures were taken at that meeting with representatives of an adequate number of lawyers to be sure there was nothing that would touch on antitrust. The question is you are dealing with a society that is quite different from ours, a business environment very different from ours, I believe that the semiconductor limitation started as a result of a Government advisory to buy Japanese.

I think that happened back in the midseventies. I think that the limitation that was put on it has to be taken off by those people. At no point was anybody asking that any individual company have a greater share of the Japanese market.

It was totally a matter of asking that the Japanese market be opened up to imports. From a 10-percent level at which it has been for quite a few years and has not expanded, certainly something can be done to open up that market.

Mr. CRANE. I agree with you there. There clearly are barriers to market entry in their own market. And I was not going to sandbag you, but the definition of what constitutes targeting and home-market protection. We have already acknowledged we have the home-market protection tax benefits.

We have already acknowledged we have certain tax benefits for some industries, but not all. The antitrust exemptions condone antitrust exemptions and all I am arguing is that what I have heard from the business community is we should revise our antitrust laws. We have heard a lot of testimony to that effect. That it is our laws that are faulty. But we have not heard so much there is with regard to what constitutes antitrust behavior.

Take science and technology assistance, for example. Could you classify the Space Program or defense contract. I mean, it is sure a benefit to the airplane industry when the Government is contracting. It has given the U.S. airplane industry a big leg up in the international markets until we got the airbus with their clearly uncompetitive practices on the part of our European trading partners. They are finding soft touches like Eastern that want to buy on the cheap when they are rolling those things off the production line every day. I mean, that is an area that ought to be addressed.

But then there is financial assistance. I mean the Lockheed bailout, Chrysler bailout, Penn Central bailout for examples. This is another part of our industrial policy.

The only thing I can't think of in this whole list is foreign investment controls. I couldn't think of an example of that, but Government ownership, TVA, Grand Coulee Dam, Amtrak, and Conrail. My point is in defining what constitutes targeting by Government action. I am not sure that that list is by any means complete. Mr. Regan added another one, for example, discriminatory Government procurement.

How about this fleet of Chrysler products that the Federal Government is still running all the bureaucrats around in?

Mr. REGAN. I don't think there is any one of us that is going to sit here and tell you we don't. The U.S. Government does do some of the things we cited here that we commonly see in targeting programs.

But I think we have to look beyond that. We have to look at qualitative factors related to the practice and we have to look at its effects. It is a matter of degree and effects. I think across-the-board the United States does not transfer as many resources as other governments do to a specific industry with the sole intension of making that industry competitive worldwide. With respect to effects, you know Chrysler is not exporting cars to Japan and causing any harm to the Japanese auto industry.

Mr. CRANE. I don't think any American car manufacturer is.

Mr. REGAN. My point is we are prepared to accept an injury requirement in, a tough targeting law offshore like we are suggesting for the United States. To be entirely honest with you, sir, we are not concerned about a tough foreign law on targeting with an injury requirement because we can't point to any Government assistance that has made us in a particular business.

Mr. CRANE. Let me ask one other question of anyone on the panel. I only have the figures on telecommunications. Between 1983 and 1984, our domestic telecommunications market went from $48 billion to $54 billion.

These are Commerce's figures, and the entire Japanese market was estimated at only $4.5 billion by 1984. The United Kingdom was about $2.5 billion. West Germany was under Japan as I recall about $4 billion.

France was somewhere in that same category. The question in my mind is when you have got that kind of incredible growth going on here at home what is the big deal about penetrating a foreign market? What if you got in at 25 percent in the Japanese market in telecommunications? That is $1 billion.

Our domestic market was growing at the rate of $6 billion between 1983 and 1984. The opportunities, it seems, are so much more readily available here.

We have such advantage. Transportations costs are down. We have got raw materials. What is the problem in that regard that really makes the opening of that foreign market so much more important in a way than what is going on right here at home?

Mr. MARSHALL. If I may reply, give one reply. I think what you are speaking to is something that is very tempting to all U.S. manufacturers to look only at the home market, however, when one looks beyond and sees what is on the horizon you have to be in the foreign markets, particularly if those markets that have manufacturers that will end up in this market.

If you allow them to be totally alone in their own market, protected to do their own thing, they will eventually build up a base and be over here taking this market which is the market, the big important market in the first place.

Mr. CRANE. If you will pause for just a second there, Travis, we did that same thing in the 19th century with regard to trying to develop our own establishment by putting walls up around the

country. In going back, in fact, to the end of the 18th century on the assumption the British were so much more advanced, we needed that. In fact, it was a contributing factor to the War Between the States because the agricultural States were getting stiffed. We are losing the markets and we are paying higher prices to get shoddier equipment here at home because you are denying us access to products abroad. Developing countries, it seems, are going to do that.

But if we have the advancements that we have achieved, how can a country that is just starting up from scratch, even if they are giving all kinds of those domestic breaks to their domestic manufacturer, how do they close that gap on us?

Mr. MARSHALL. They don't do it overnight if you follow whether it is in the mobile radio or semiconductor, it takes a decade or more to build up. But if they have the protected home market in which to build and if the other factors of targeting go into it, government funds, noninterest loans or forgivable loans, if they all go into the R&D and manufacturing of this equipment to help them build up to this export competency, they may be able to do it.

I think that Mr. Regan made a statement a moment ago, not all those programs are successful but some of them are. If you are in a business and looking at something where a country is targeting your market, you become very wary of it. You don't know whether or not it will be successful but you want in their market early.

We were excluded more or less from many telecommunications markets during this buildup stage, particularly the Japanese one.

Mr. REGAN. Sir, I would like to make a point on that as well.

Two points.

First of all, that number that you quoted which was reported by the Department of Commerce includes telecommunications services. When you include purchase of equipment and services that is how you get the big figure. If you take the services out, you get just equipment sales which is in the area of $18 to $20 billion for the United States. It is lower figure that should be compared to the Japanese figure of $4.2 billion. So the magnitudes of order are still high, but not as high as you indicated.

Second of all, I think you have to remember that we are talking about dynamic economics in high-technology sectors to a very large extent. In these sectors volume is critical to reducing costs and to being successful.

Now, in the case of optical fiber, the Japanese had decided to build an optical fiber network long before the United States started to build its own. For us to have been in Japan and have had the experience to produce and sell in Japan would have made us even more competitive in the United States market than we are today because we would have built volume and we would have reduced our costs.

But we were excluded from the Japanese market and therefore were unable to get the benefits of learning if you will that are characteristic of many high-technology sectors. I wish I had a graph for you and I would be glad to send it to you which shows how much our costs have fallen over 3 years as a result of increased capacity.

[Information made available to members of the committee.]

Mr. BLACK. I would like to say that our ability to compete worldwide is critical and it depends on volume and low cost, so closed markets are part of our problem. The one thing I don't think anyone mentioned is while there is this disparity now—the rate of growth in a number of market sectors, that is Europe and the Pacific basin, is very high, and predictions show that they will be very substantial and large markets. So market access is not a problem which we can ignore.

Mr. CRANE. One last question, and that is concerning one of the cultural differences between us and the Japanese, our very high levels of consumption and the Japanese people's traditionally low levels of consumption. I think part of that is cultural but part of it has to do with providing incentives in a tax code for people to save by not taxing interest dividends and capital gains.

The way they get those incredible rates of personal income going into savings is because they have incentives in their code to save. In this country you save and you get repeatedly punished for doing it, and by contrast you go into debt and get rewarded for doing it.

Again, it is a parting shot at the tax bill under consideration over there in the other body right now, but would you gentlemen concur that our tax codes ought to be reexamined in that light?

Mr. REGAN. Well, Mr. Crane, I think you are hitting on a point repeatedly and I think there is not anyone that disagrees, I think there is not the sense of priority that we would like to see on the issue of U.S. competitiveness in the area of industrial sectors.

I think there are a lot of ways that competitiveness can be influenced and clearly the Tax Code is one of those ways.

We have to adopt policies that will have a progrowth and positively impact savings and capital formation, and that just makes good sense. I wouldn't necessarily consider that an industrial policy in a sense that we see a lot of other countries adopting.

Mr. CRANE. I am a little uneasy with terms like industrial policy because one of our famous automobile CEO's, that I shared a platform with some years ago, made that stirring call for big labor, big government and big business, allocation of credit and all that sort of thing.

That is great if you are the one partner at the table with a gun under the table pointed at the other two, but I think there is incoherence in our policy. I want to thank you all.

Trav.

Mr. MARSHALL. I would just make one final comment. It is certainly repetitious but it may be responsive to what you were asking. That is that the House tax bill certainly goes the wrong direction so far as international trade is concerned. In our business, the high-technology business with tremendous engineering dollars, 10 percent roughly for the entire industry, 10 percent of sales. In Motorola, 21 percent of sales went into R&D and capital equipment. That is necessary due to high turnover of equipment, short product life, et cetera.

When you take away an investment tax credit and fool around with the R&D credit, accelerated depreciation, those are very important items when it comes to international trade, yes.

Mr. CRANE. I thank you gentlemen for your indulgence.

Mr. MARSHALL. Thank you, sir.

Chairman GIBBONS. Mr. Frenzel.

Mr. FRENZEL. Mr. Chairman, I want to know why he didn't thank me for my indulgence.

Mr. CRANE. I thank you, too, Bill.

Mr. FRENZEL. You are welcome.

Mr. Chairman, if there is any area here that has not been probed by the gentleman from Illinois, it must have been a mistake.

But I do want to pick up a point made by the gentleman, Mr. Black, with respect to export controls which are of course beyond the purview of this particular committee, but one that is an issue of great importance to us.

We are hoping, I think, as Mr. Black is, and as other members of the panel who have worked on this subject over the past couple years, for improvements which conceivably could be wed to this bill as it moves along. I think this committee has strongly supported a rationalization and an easing of those controls so that American companies could compete more effectively in international markets.

I wanted to thank Mr. Black for raising the question and thank him and others on the panel who have been fighting that good fight so long and so unsuccessfully.

If you have any comments, sir, I would be pleased to hear them.

Mr. BLACK. Thank you, Mr. Frenzel. We know that you were deeply involved in the 3 years of attempting to pass the Export Administration Act, and your help was very crucial in preventing some very negative provisions from being included in that bill, which attempted to improve the Export Administration Act and which took so much of the Congress' time. It contained, at an early stage, in the House version of the bill, some provisions which I think the private sector thought were significant improvements over current law. Many of the best portions of that bill unfortunately were dropped in conference and were not able to be enacted.

We think that the basic underlying difficulties in the export control area are simplifying them to two: first, the very broad far-reaching breadth of the controls; and second, the structure of administration and review which is extremely cumbersome, burdensome and slow. Combined these impose a very serious burden on our attempt to compete internationally.

We believe that export controls, if narrowly focused and targeted to truly important technologies, which if gotten to our adversaries would be harmful, should absolutely be rigorously controlled. We support the core concept of the legislation. The difficulty is in the breadth of the controls and in the fact that in their implementation, the kind of regulations and procedures U.S. companies go through are far more extensive and complex than those of our cooperating Cocom allies.

We think that with a major reduction in the scope of the controls we would have better enforcement in those technology areas which are really important for our national security. I think that is what we need to focus on, and that there is benefit to our national security as well as for trade in export control reform. If the omnibus bill or trade legislation coming out of here has a chance to marry up with useful provisions in that area, I think it would—there would be widespread industrial support for such provisions.

We know no one is terribly happy with the situation now. We are frustrated in trying to cope, and it is certainly not helping us compete.

Thank you.

Mr. FRENZEL. Thank you very much.

Mr. SAYER. If I may, sir, echo Mr. Black's comments and thank you for your participation in arriving to the point where we are now, both in export controls as well as in the R&D tax credit, the limbo or wherever.

We are greatly appreciative of this and we think these are going to be uniformly attributing to our international competitiveness as an industry.

Mr. FRENZEL. Thank you.

I wonder if I might ask Mr. Marshall about his question of mask work rights which was in your testimony. I was not here when you gave it.

You referred to the Semiconductor Protection Act of 1984 and suggested that this was an intellectual property which should be protected under our bill. Is that your position?

Mr. MARSHALL. Yes. The semiconductor mask is not covered in the bill. That is a vital part of the semiconductor manufacturing process. That is what was referred to in the testimony, that the mask should be covered.

Mr. FRENZEL. Would the mask have to be listed specifically?

Mr. MARSHALL. I assume that is the case. I do not know that, Mr. Frenzel, but I will certainly get the answer to that.

Mr. FRENZEL. I am certain the committee will want to make sure that it protects the property rights of all definable kinds, the ones that we can work on with some specificity here.

I am grateful to you for calling that to our attention.

I would pass on to Mr. Regan, you are the man who supported the injury test. You don't support it for 337 though, do you?

Mr. REGAN. That is right, sir. Different statutes, different purposes, different reasons.

Mr. FRENZEL. Do you want to explain the difference for us?

Mr. REGAN. Sure.

Section 337 of the Tariff Act of 1930 is used largely to protect intellectual property rights.

This statute is fundamentally different than other unfair trade statutes which are designed, as in the case of the countervailing duties law, restrict trade in cases only of injury and to offset those unfair practices. It is different in a sense that it is designed to protect the exclusive right of an intellectual property right holder.

Under U.S. patent law if someone violates your patent you can get injuction relief and damages by proving infringement. Under 337 though, to get relief from infringing imports you have to meet a number of different additional standards.

First you have to prove infringement as you do in district court. But in addition to that, you have to prove that there is a domestic industry in the United States using the patent, you have to prove that that industry is economically efficiently operated, and you have to prove that the infringement had the effect or tendency of destroying or substantially injuring the industry.

It appears to me, sir, that when you are talking about the protection of a property right, the only question we have here is infringement and other issues such as whether or not the industry is economically inefficiently operated or whether or not the industry is economically injured are all irrelevant.

Mr. FRENZEL. Thank you very much for explaining that to us a little more clearly. It is important to know that we are not trying to prove up something else, rather only that the property right was violated and the violation itself ought to be sufficient and it is quite different from the proofs required under other sections of the law.

I have no other questions of this panel. You have been here longer than intended. I would simply say that like my colleague, Mr. Crane, I have some difficulty with the concept of targeting, I think if we sit here and talk about it all day, we can probably agree it is very difficult to draft language, however, that doesn't get our feet onto some very soggy ground.

We all listened to the gentleman from the AFL–CIO telling us we must play on the field that is there, or play the game being played. I almost got the impression that the more unfair tactics the opponents used the better, because then we can use them.

That isn't really what we want to do. We want to clean it up and build firm footing throughout.

I am troubled by that, and I look forward to being counseled by all of you as this goes through the process.

I yield the balance of my time.

Mr. GUARINI [presiding]. Mr. Marshall, we don't want to keep the panel much longer because you have been very patient with us and we appreciate the benefit of your thinking.

In the compensatory damage area, would it be only for dumping that compensatory damages be allowed in a civil action?

Mr. MARSHALL. That is the one that we feel is the——

Mr. GUARINI. Do you do it in targeting or——

Mr. MARSHALL. Targeting could fit the same category.

Mr. GUARINI. Except that would be against the country?

Mr. MARSHALL. Yes. Dumping is an individual company.

Mr. GUARINI. Yes.

Mr. MARSHALL. And targeting is country and the companies.

Mr. GUARINI. Basically it would only work against dumping as a practice?

Mr. MARSHALL. It would be certainly cleaner there and easier to do. Dumping, as the—dumping has the disadvantage that the U.S. company or offended company goes through the loss of market share and loss of profits. In order to compete it will reduce its own prices, and lose share of the market, and it has no recourse under the current law other than to accept that and eventually hope the price gets back to normalcy due to the fact that the ITC has found dumping.

Mr. GUARINI. Do you have any opinion whether or not it would be violative of GATT to make damages compensatory?

Mr. MARSHALL. I believe it would not violate the GATT rules.

Mr. GUARINI. Mr. Black?

Mr. BLACK. I believe compensation in the dumping area would require GATT modification.

Mr. GUARINI. If it were treble damages possibly, but if it was single damages would it be just economic damage, would it be violative in your opinion?

Mr. BLACK. I am sorry, I didn't hear.

Mr. GUARINI. If it were just economic loss, not treble damages in your opinion, would it be violative of GATT?

Mr. BLACK. Economic loss but compensation to the company, my understanding is that that is prohibited. If you think it is a worthwhile negotiating objective, I could imagine legislation that would come into force contingent upon some negotiation approval, but my understanding is that at the moment it would be a violation of the GATT.

Mr. MARSHALL. We do have a difference. Our counsel feels that it is within the rules of the GATT.

Mr. GUARINI. Would you bring it in the Federal District Court or would you bring it before the Court of International Trade which handles those cases?

Mr. MARSHALL. Federal District Court.

Mr. GUARINI. Would it bring a plethora of strike suits or be an employment program for trade lawyers or do you think it would create a multitude of litigation and create problems administering the dumping laws?

Mr. MARSHALL. Well, we would hope we wouldn't do anything to create a field for a market for trade laywers, but it should be able to handle it as I say, in the District Court, the way you would handle any suit of that type.

I don't see why it would generate a whole new——

Mr. GUARINI. We would have to be careful that we don't create a whole new cause of action that would be so wide open that strike suits would be filed all over the place and create more injustice and more difficulty with our trading partners than we have now.

Mr. MARSHALL. That is true. Of course this would apply only in the case of where one had already won the trade action in the first place.

Mr. GUARINI. So therefore it would be contingent on the fact that it was already found injury?

Mr. MARSHALL. Yes, that is correct.

Mr. GUARINI. And would it be a thoughtful practice to take the funds that would be received instead of giving them civilly to the individual who brought the action, to let them take counsel fees out of it and give the balance to a Trade Adjustment Assistance Program?

Mr. MARSHALL. Well, the proposal we had since there already is a Trade Adjustment Assistance Program is whatever fees are available would be available to the company to offset its losses. That is the proposal we have.

To get into the trade adjustment assistance that goes beyond that involving employees I assume, too.

Mr. GUARINI. Yes, the idea is to be sure they don't dump any more.

Mr. MARSHALL. I understand that.

Mr. GUARINI. And to take the profit out of dumping.

Mr. MARSHALL. Yes.

Mr. GUARINI. There could be large sums of money that could be recovered.

Now, you take a lot of incentive out of bringing the suits if the money goes to the Government, but they still accomplish their objective in preventing unnecessary dumping suits.

Mr. MARSHALL. What you are asking is a question I am not prepared to answer. I will look at it but to return the injury to the company and not go beyond that. I am sympathetic to what you are saying, but we have not looked at that really.

Mr. GUARINI. Any other thoughts on the part of the panel regarding dedication of the sums to trade adjustment assistance or whatever, if there are moneys received that they could be dedicated to a special fund, for example, where an industry has been injured?

Mr. BLACK. I think it is a concept that we have not really explored. I have not come to a conclusion on that. I think it is worthwhile exploring. At the same time I think in the actual administering of it we would see some—I think it has some potential for abuse and I don't want to see just another litigation exercise—I am a trade lawyer, but I don't really want to just see a tremendous amount of new legal activity being promoted. I do feel we would have GATT problems—if it became something we could get in the negotiation context though, I think it could be worthwhile.

Mr. GUARINI. All of you feel it would be a deterrent to dump if we allowed civil action for compensatory damages in dumping cases.

Mr. BLACK. Yes.

Mr. GUARINI. Thank you. We appreciate your time and thoughts this afternoon, and special thanks to each and every one of you.

Thank you.

Mr. REGAN. We would like to thank you, sir.

Mr. MARSHALL. Thank you.

Mr. SAYER. Thank you.

Mr. GUARINI. From the Chocolate Manufacturers Association, and National Confectioners Association, Mr. Richard T. O'Connell, president.

Mr. O'Connell, if you would come forward. When you are ready, you may proceed. Your remarks will be placed into the record.

STATEMENT OF RICHARD T. O'CONNELL, PRESIDENT, CHOCOLATE MANUFACTURERS ASSOCIATION OF THE UNITED STATES OF AMERICA, AND NATIONAL CONFECTIONERS ASSOCIATION OF THE UNITED STATES, ACCOMPANIED BY MARIETTA BERNOT, TRADE SPECIALIST

Mr. O'CONNELL. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I am Richard T. O'Connell, president of the Chocolate Manufacturers Association of the United States of America and the National Confectioners Association of the United States. These two organizations represent 118 chocolate and sugar confectionery manufacturers. I am accompanied today by our trade specialist, Marietta Bernot. I apologize to the committee for not bringing a supply of our products to brighten up your afternoon.

Before I begin my statement, I want to express our appreciation to members of this committee for their consistent support for our industry's policies on trade.

Americans consumed over $9 billion worth of confectionery at retail last year including $380 million of imported retail products. As these figures suggest, the U.S. is a competitive and open international market for confectionery. U.S. tariffs at 5 percent for solid chocolate and 7 percent for all other confectionery are among the lowest in the world. Imports have increased approximately 200 percent since 1981 and enjoy a growing market share.

The import challenge has been the catalyst for an industry drive to develop foreign markets and increase exports. For the past 2 years we have worked closely with this committee to eliminate tariff and regulatory barriers blocking U.S. confectionery exports, especially to Asia.

We can report some progress such as removal of the import ban in Korea which leaves a 40-percent tariff on chocolate confectionery and a 35-percent duty on sugar confectionery to be overcome. Taiwan has cut its duty on chocolate from 75 to 30 percent. Japan, the second largest foreign market for U.S. confectionery exports, has persistently refused to lower its 20-percent tariff on chocolate. Its duty on sugar confectionery remains at 35 percent. The U.S. Trade Representative has asked Japan to match the U.S. rate of 7 percent.

Our experience in Japan illustrates the problem I bring before the committee today. Japan's 20-percent duty on chocolate is among the highest of any industrialized nation and three times the U.S. duty. Their 35-percent duty on sugar confectionery is five times our rate. These tariffs protect five economically and politically powerful Japanese confectionery companies who control 90 percent of the market.

Imported chocolate is suppressed by the tariff to a 3-percent market share. From a protected home market base, Japanese companies are accelerating confectionery exports, particularly taking advantage of the open U.S. market where duties range from 0 to a maximum 7 percent.

This lack of reciprocity in confectionery trade is indefensible. Yet the stalemate with Japan persists in part because the leverage of a section 301 remedy is not a recourse when a tariff is the main obstruction to U.S. exports.

Tariffs, particularly GATT bound tariffs, have not been seen as remediable under existing section 301 statutes. As a result, the administration, citing a 1980 decision concerning Japanese restrictions on leather imports, has been reluctant to apply section 301 pressure on Japan to resolve the dispute over chocolate, even though the 20-percent tariff has been challenged as unfair and inequitable in joint Senate and House communications to the Japanese Government.

Mr. Chairman, we believe that section 301 is intended by Congress to reach all types of unfair trade barriers, whether or not those barriers are inconsistent with or contravene international legal obligations. Among the most visible and serious of trade barriers are excessive tariff rates, and it is inconceivable that Congress

intended to exclude tariffs from the broad scope of barriers actionable under section 301.

We feel strongly, Mr. Chairman, that a U.S. industry whose exports are blocked by high foreign tariffs is entitled to no less protection and Government advocacy under our trade laws than an industry facing quota restrictions.

Section 301 of the Trade Act of 1974 authorizes the President to respond to unjustifiable, unreasonable or discriminatory acts, policies, or practices of a foreign country which burden or otherwise restrict U.S. commerce. In the Trade and Tariff Act of 1984, Congress defined the terms "unjustifiable," "unreasonable," and "discriminatory" for the first time by statute. In particular, the term "unreasonable" was defined as any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable.

The intent of Congress is clear in this language that action against foreign barriers to U.S. exports should not be limited only to those practices inconsistent with GATT.

High tariffs exemplify trade restricting practices and are among the most economically insidious. The financial impact is not limited to duty assessment at time of entry. It is amplified through each step in the wholesale to retail chain until reaching the consumer as an exaggerated, often uncompetitive price. Unless exporters are willing, and able, to absorb the tariff for the sake of market development, the cost must be passed on, risking loss of consumer appeal and market share.

In its first Annual Report on National Trade Estimates—1985—mandated by section 181 of the Trade and Tariff Act of 1984, the U.S. Trade Representative recognized tariffs as one of the 12 categories of foreign acts, policies, or practices constituting barriers to, or distortions of, U.S. trade. The report went on to highlight Japan's excessive tariff on chocolate as a serious handicap to U.S. exporters competing against large domestic manufacturers and a deliberate attempt by Japan to limit imported confectionery to a minimal share of that market.

Accompanying my testimony is a model that uses U.S. exports of chocolate to Japan to demonstrate the impact of an excessive tariff. It is evident the United States has a comparative advantage in producing confectionery and should be able to compete in the Japanese market even with freight and insurance costs.

By imposing a 20-percent ad valorem tariff that is seven times the average tariff rate in Japan, the duty-paid landed-cost of American chocolate is escalated to a level that more than offsets the advantage and completely undermines the ability of our companies to price competitively.

Mr. Chairman, excessive tariffs unquestionably deny exporters fair and equitable market access and should not be precluded from remedy under U.S. trade laws. While it is understood tariffs will be subject to further negotiation in the new GATT round, more immediate leverage is needed.

We urge the committee, either through specific language amending section 301, or in the committee's report on proposed trade reform legislation, to clearly establish congressional intent that the

President take action under section 301 of the Trade Act of 1974 against excessive tariffs that restrict U.S. exports.

I am submitting to the committee a more detailed discussion on tariffs as unreasonable barriers to U.S. commerce within the meaning of section 301. Included are suggested criteria to determine whether a tariff has the effect of denying fair and equitable market access. We would be pleased to work with the committee on any aspect of the proposal we have offered today.

Thank you.

[The attachments to the statement follow:]

MODEL OF COMPARATIVE COSTS
FOR CHOCOLATE MANUFACTURED IN JAPAN AND THE U.S.
(YEN PER KILO, Y200 PER $)
1985

JAPAN TARIFF AT 20%

VARIABLE	JAPAN		U.S.	
	% OF COST	VALUE	% OF COST	VALUE
RAW MATERIALS	62%	Y530	58%	Y402
PACKAGING	8	65	8	56
DIRECT LABOR	10	88	14	96
OTHER DIR. COSTS	1	11	1	10
TOTAL DIRECT COSTS	81	694	81	564
FIXED COSTS	19	162	19	129
TOTAL MFG. COSTS	100%	Y856	100%	Y693
U.S. INLAND FREIGHT				2
EXPORT FREIGHT & INSURANCE				77
SUBTOTAL		856		772
IMPORT DUTY @ 20%				154
CUSTOMS CLEARANCE				30
DUTY PAID LANDED		Y856		Y956

MEMORANDUM OF LAW

Section 301 Applies to Excessive Tariff Rates Which Unreasonably Deny Fair and Equitable Market Access for United States Goods

I. Introduction

Section 301 of the Trade Act of 1974, as amended, 19 U.S.C.A. § 2411 (West Supp. 1985), authorizes the President to take appropriate action to respond to "unjustifiable, unreasonable, or discriminatory" acts, policies, or practices of a foreign country which burden or otherwise restrict United States commerce. As this memorandum demonstrates, in appropriate circumstances an excessive tariff rate may constitute an "unreasonable" foreign country practice within the meaning of Section 301, thereby authorizing the President to take responsive measures under the statute.

II. The 1984 Amendments to Section 301 and Their Legislative History and Interpretation

In the amendments to Section 301 enacted by the Trade and Tariff Act of 1984, Pub. L. 98-573, Title III, Oct. 30, 1984, 98 Stat. 3000, the terms "unjustifiable," "unreasonable," and "discriminatory" were, for the first time, defined by statute. In particular, the term "unreasonable" was defined as

> any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable. The term includes, but is not limited to, any act, policy, or practice which denies fair and equitable -

(A) market opportunities;

(B) opportunities for the establishment of an enterprise; or

(C) provision of adequate and effective protection of intellectual property rights.

Section 301(e)(3), 19 U.S.C. § 2411(e)(3), as added by Pub. L. 98-573, Title III, Sec. 304(f)(2).

In adding the definition of "unreasonable" in the 1984 amendments to Section 301, Congress clearly intended to reach all types of unreasonable foreign country trade restraints which impede full and fair market access for U.S. products. Thus, in the Senate Finance Committee report on S. 144, the International Trade and Investment Act (incorporated as Title III in the Trade and Tariff Act of 1984), the Committee stated that it intended the definitions added by the bill (including the definition of "unreasonable") to "clarify existing law and give emphasis to the President's authority to retaliate against certain types of acts, policies and practices." S. Rep. 98-24, 98th Cong., 1st Sess. (1984) at 7 (emphasis added). The Committee noted that the phrase "fair and equitable" contained in the bill's definition of "unreasonable" is not itself defined, "since it remains within the President's discretion to determine when circumstances exist which require action under this provision." Id. Nonetheless, the statutory provision (quoted above) defining "unreasonable," which was carried forward unchanged from S. 144 to Title III of the Trade and Tariff Act of 1984, specifically encompasses acts, policies, or practices which are not themselves inconsistent with

or in violation of the international legal rights of the United States.

While the language of the statute is crystal clear on this point, the legislative history and the structure of the statute further confirm the Congressional intent to reach all types of unfair trade practices. The Senate Finance Committee thus expressly noted that by including a non-exclusive list of factors for the President to consider in determining when to proceed, the Committee "wishes to emphasize that certain acts, policies and practices which are not necessarily in violation of specific international agreements are becoming increasingly harmful to U.S. interests and should be dealt with accordingly." Id. And in adding a statutory definition of "unjustifiable" to expressly encompass "any act, policy, or practice which is in violation of, or inconsistent with, the international legal rights of the United States," Section 301(e)(4)(A), 19 U.S.C. § 2411(e)(4)(A), as added by Pub. L. 98-573, Title III, Sec. 304(f)(2), Congress further confirmed that the distinct and independently-defined term "unreasonable" is intended to encompass acts, policies, and practices which would not already be remediable as "unjustifiable" under applicable international agreements.

Excessive tariff rates are a prime example of the type of trade-restricting practice which may deny "fair and equitable . . . market opportunities" within the meaning of Section 301(e)(3)(A), 19 U.S.C. § 2411(e)(3)(A). Historically, of course, high tariff levels have constituted one of the most

frequently encountered and serious obstacles to free trade. When the General Agreement on Tariffs and Trade ("GATT") came into being in 1948, its primary concern and central feature was a commitment to the limitation and reduction of tariffs. That goal is recognized by Article XXVIII bis of the Agreement (emphasis added):

> The contracting parties recognize that customs duties often constitute serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis, directed to the substantial reduction of the general level of tariffs and other charges on imports and exports and in particular to the reduction of such high tariffs as discourage the importation even of minimum quantities, and conducted with due regard to the objectives of this Agreement and the varying needs of individual contracting parties, are of great importance to the expansion of international trade.

In accordance with this primary goal, successive, general reductions in tariffs have been carried out through multilateral negotiations under the aegis of GATT. The most recent of these multilateral negotiations, the Kennedy Round in the 1960s and the Tokyo Round in the 1970s, resulted in significant reductions in the overall levels of import tariffs. While these overall reductions have shifted the major focus on international trade problems to non-tariff barriers, individual instances of excessive tariffs nevertheless remain, which continue to present serious obstacles to the free flow of international trade for the goods subject to the tariffs. While such tariffs may be the subject of further reductions in future multilateral trade negotiations under GATT, the GATT has also specifically

recognized that GATT contracting parties are free to negotiate tariffs (and other trade matters) outside of GATT. GATT, 2 BISD 166, 168 (1952); see also J.H. Jackson, World Trade and the Law of GATT (1969) at 221.

The intent of Congress that Section 301 reach unfair tariff barriers as well as non-tariff barriers is confirmed by Section 303 of the Trade and Tariff Act of 1984, which amends Title I of the Trade Act of 1974 to require USTR to prepare and submit an annual report concerning barriers to market access for U.S. goods. Section 181 of the Trade Act of 1974, 19 U.S.C. § 2241, as added by Trade and Tariff Act of 1984, Pub. L. 98-573, Title III, Sec. 303(a). Section 181 requires USTR to identify and analyze "acts, policies, or practices" which constitute significant barriers to, or distortions of, United States exports of goods or services, and to estimate the trade-distorting impact of such acts, policies, and practices. Section 181(a)(1), 19 U.S.C. § 2241(a)(1). Further, USTR is to submit, along with the analysis and estimate, a report to Congress concerning

> any action taken (or the reasons for no action taken) to eliminate any act, policy, or practice identified under subsection (a), including, but not limited to -
>
> (A) any action under section 301, or
>
> (B) negotiations or consultations with foreign governments.

Section 181(b)(2), 19 U.S.C. § 2241(b)(2).

The Senate Finance Committee's report on S. 144, from which this provision was adopted, states that the identification of trade barriers and the formulation of national trade estimates was intended as a "a step in the direction of a more active policy of enforcing United States rights under trade agreements and identifying objectives for future negotiations." S. Rep. No. 98-24 at 4. The Report further states:

> While not requiring that any particular action be taken, the Committee intends that the USTR should consider vigorously utilizing existing authorities and dispute settlement procedures to deal with identified barriers and distortions.

Id. at 5.

In its first Annual Report on National Trade Estimates (1985), USTR has listed high tariffs as one of 12 categories of trade barriers analyzed in the Report. The Report (at 4) notes that some trade barriers identified in the report, including high tariffs, may in fact be consistent with existing international obligations, such as GATT. Nonetheless, as the Report further acknowledges, inconsistency with a country's obligations under an international agreement is not a prerequisite to the U.S. taking action against a trade barrier: "in some circumstances, including areas where GATT rules do not apply, the United States has initiated cases under Section 301." Id. at 4. Consistent with the definition of "unreasonable" foreign country acts, policies, and practices, as not necessarily limited to acts, policies, or practices which are inconsistent with GATT or other international agreements, high tariffs are identifiable trade barriers which,

in particular circumstances, may unreasonably deny "fair and equitable" market access for U.S. goods.

The intent of Congress that Section 301 reach unreasonable tariff barriers is further confirmed by recent Congressional statements concerning proposals to encourage or require Presidential action under Section 301. On March 28, 1985, the Senate passed a concurrent resolution, by a vote of 92-0, to express the sense of Congress that the President respond to unfair trade practices of Japan. S. Con. Res. 15, 99th Cong., 1st Sess., 131 Cong. Rec. S 3573 (March 28, 1985). The resolution calls on the President to take all appropriate and feasible action, including, specifically, actions described in Section 301, to (1) enforce the rights of the United States under trade agreements to which Japan is a party and (2) obtain the elimination of Japanese

> acts, policies, and practices which are
>
> (A) inconsistent, and otherwise deny benefits to the United States, under trade agreements to which Japan is a party; and
>
> (B) are unjustifiable, unreasonable, or discriminatory and burden or restrict United States commerce.

During consideration of the measure, Senator Chiles, among others, made specific reference to high tariffs as an unfair Japanese trade practice, and inserted into the record a table comparing U.S. and Japanese tariff rates on a number of items, including beef, oranges, leather, wood products, and chocolate confectionery. 131 Cong. Rec. S 3563 (March 28, 1985). These

specific examples of excessive Japanese tariff rates dramatically illustrate the sense of the Senate that excessive tariff rates may constitute an unfair trade practice remediable under Section 301.

Further confirmation of Congressional intent is found in recent legislation endorsed by the Senate Finance Committee and introduced in the Senate to require Presidential action against unfair Japanese trade practices. S. 1404, "A Bill to Require the President to Respond to Unfair Trade Practices of Japan", 99th Cong., 1st Sess., 131 Cong. Rec. S 9185 (July 19, 1985). The Senate Finance Committee's report on the bill notes that the bill intentially adopts the language of Section 301 and that "the Committee intends to incorporate the meaning of that section 301 language into its bill". S. Rep. 99-102, 99th Cong., 1st Sess. (1985) at 4. Among the unfair trade practices discussed in the Committee's report are high tariffs, including the Japanese tariffs

> on a number of products in which the United States is competitive: wood and wood products, manufactured tobacco products, chocolate confectionery, beef, citrus, egg products, leather and furskins, refined copper, and kraft paper.

Id. at 5. The report further notes that "many of these tariffs are excessive by comparison with other industrialized nations and especially the United States". Id. The Senate Finance Committee quite clearly indicates its belief that excessive tariff rates may be considered unfair trade practices remediable under Section 301.

III. Application of Section 301 to Excessive Tariff Rates

In the past, excessive tariff rates have been considered for possible action under Section 301 in two instances.

In 1976, a Section 301 investigation concerning excessive tariff rates was initiated by the Office of the Special Representative for Trade Negotiations. See Petition of Charles C. Rehfeldt (Doc. No. 301-9), 41 Fed. Reg. 15452 (April 13, 1976) (initiation of investigation). In that case the petitioner alleged that increases in tariffs imposed by Taiwan on color televisions (from 33 percent to 60 percent) and on other major home appliances (from 46 percent to 60 percent) were "confiscatory" and therefore an unfair trade practice within the purview of Section 301. Following diplomatic discussions between the United States and Taiwan, Taiwan agreed to reduce its tariffs, and the case was terminated. 42 Fed. Reg. 61103 (Dec. 1, 1977) (termination of investigation). No indication was given in either the notice of initiation or the notice of termination that the excessive tariff rates were considered to be "unjustifiable" or otherwise inconsistent with any international legal obligation owed to the United States. The inference to be drawn, therefore, must be that the excessive tariffs were considered "unreasonable" in the circumstances. Certainly, the data presented in the petition (published with the notice of initiation) demonstrated that imposition of the excessively high tariffs resulted in a sharp decline in imports of U.S.-made goods

covered by the tariffs, and thereby denied the United States fair and equitable market opportunities.

In the second case, concerning Japanese restrictions on leather imports, President Carter determined, in a Memorandum of July 31, 1980, that a 20 percent duty on imports did not constitute an unfair trade practice under Section 301. 45 Fed. Reg. 51171 (August 1, 1980).[1/] The determination stated, first, that because the duty was a "bound" GATT rate, it was not inconsistent with GATT. Without any further explanation, the determination further concluded: "Similarly, the duty cannot be considered 'unreasonable'."

This interpretation of Section 301, that a bound GATT rate by definition cannot be found to be "unreasonable" under Section 301 because it is not inconsistent with GATT, is clearly an erroneous interpretation of the law. Whatever validity that interpretation may have had in 1980,[2/] it has undeniably been overturned by the amendments to Section 301 enacted by the Trade and Tariff Act of 1984. As noted above, the statutory definition

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1/ The determination did find that quantitative restrictions on leather imports imposed by Japan were inconsistent with its obligations under GATT, and the United States conducted bilateral negotiations with Japan in an effort to expand market opportunities for U.S. leather exports.

2/ In the legislative history of the 1979 amendments to Section 301, the Senate Finance Committee defined the term "unreasonable" as referring to "restrictions which are not necessarily inconsistent with trade agreements, but which nullify or impair benefits accruing to the United States under trade agreements or which otherwise restrict or burden U.S. commerce." S. Rep. No. 249, 96th Cong., 1st Sess. (1979) at 234 (emphasis added).

of "unreasonable" added by the 1984 amendments specifically comprehends practices which are "not necessarily in violation of or inconsistent with the international legal rights of the United States." Section 301(e)(3), 19 U.S.C. § 2411(e)(3). In this respect, the 1984 amendments have incorporated into the statute long-standing congressional intent.3/ Indeed, USTR has recognized that Section 301 investigations have been undertaken concerning unfair trade practices which are not inconsistent with international agreements. See USTR, Annual Report on National Trade Estimates (1985) at 4.

As noted above, Congress intended that the circumstances under which an excessive tariff or other trade restriction may be deemed to deny "fair and equitable . . . market opportunities" under Section 301 be left to the President's discretion, to allow him maximum flexibility in remedying foreign country practices. Nevertheless, relevant factors demonstrating that an excessive tariff has the effect of denying fair and equitable market access will, logically, include: (1) the extent to which the tariff denies the imported goods more than a minimal market share, despite the competitiveness and market acceptability of the product; (2) the extent to which the tariff exceeds the country's average tariff level; and (3) the extent to which the tariff exceeds the level of tariffs imposed on that class or kind of merchandise by other countries at a comparable level of development. Where such factors are present, and demonstrate the

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3/ See S. Rep. No. 249, 96th Cong., 1st Sess. (1979) at 24, quoted supra, note 2.

significant trade-restricting effect of an excessive tariff, the tariff may be deemed to be an "unreasonable" practice remediable under Section 301 of the Trade Act of 1974.

For example, Japan's current 20 percent tariff on chocolate confectionery has had a prima facie effect of denying U.S. chocolate manufacturers fair and equitable access to the Japanese market. As part of the Tokyo Round of Multilateral Trade Negotiations, Japan agreed to reduce its overall duty level to an average of 3 percent ad valorem. On a significant number of items, however, including chocolate, Japan has maintained excessive tariff rates. The 20 percent Japanese tariff is the highest tariff on chocolate confectionery of any industrialized nation, and is four times the basic U.S. tariff rate (5 percent) on solid chocolate bars and nearly three times the U.S. tariff rate (7 percent) on chocolate and sugar confectionery.

The high Japanese tariff on chocolate has had the effect of preventing imports from gaining more than a minimal share of the large Japanese market, despite substantial sales efforts by U.S. companies, an otherwise competitive cost structure, and a demonstrated acceptability of U.S. chocolate products. In its Annual Report on National Trade Estimates (1985), USTR specifically listed chocolate and chocolate confectionery as one of eight products for which Japan's high tariff rates act as barriers to U.S. exports. In describing the estimated impact of the 20 percent tariff on chocolate and chocolate confectionery, the Report states:

This tariff handicaps U.S. manufacturers' ability to price competitively against domestic producers in the Japanese market. All foreign imports combined comprise only 3 percent of the Japanese market. Although U.S. exporters provide one-half of all Japanese imports, that is only a 1.5 percent market share. U.S. exports have only risen from 2,368 metric tons in 1981 to 2,819 tons in 1984. Tariff reductions would permit greater exports into a large market.

All available information indicates that the limited market share garnered by imports is due specifically to the excessive tariff, which necessarily limits sales of imports in a price-sensitive market. A study conducted by Japan's Ministry of Agriculture and Fisheries in 1979 demonstrated that consumers preferred the taste and packaging of imported chocolate products but were deterred from purchasing the imports because of price. Nor can the limited share of the Japanese chocolate confectionery market won by imports be attributed to a lack of effort; over the last several years, U.S. and European chocolate manufacturers have made substantial investments in distribution networks and marketing arrangements for their products, with little or no gain in market share to show for their efforts.

Furthermore, a recent (January 1986) study of the comparative costs of production of chocolate confectionery in the United States and Japan demonstrates that the 20 percent tariff rate far exceeds the level necessary to offset the small cost advantages enjoyed by U.S. chocolate manufacturers. The study shows that, at the current rate of exchange of 200 yen to the dollar and at current world sugar prices, a tariff rate of 9

percent on chocolate confectionery would yield a duty-paid landed cost for U.S. chocolate confectionery equivalent to Japanese production costs. Moreover, as sugar prices continue their expected rise from record low levels, the equilibrating tariff level will decrease to 7 percent. Thus, although a major premise underlying international trade is that each country should export those goods in which it has a comparative advantage, the current Japanese tariff level of 20 percent cannot be justified even on the basis of overcoming comparative cost disadvantages for Japanese producers.

Recognition that, in particular instances, excessive tariff rates are remediable as "unreasonable" under Section 301 because they deny fair and equitable market opportunities does not thereby lead to the conclusion that all high tariffs are by definition unreasonable. High tariffs can, and do, co-exist with relatively high levels of market penetration by imports. For example, the average U.S. tariff on textiles and apparel is 22.3 percent; yet the import penetration ratio for textiles in the United States is approximately 22 percent.4/ Indeed, the limited effect of the tariff rates on the import penetration level is significantly understated, because most textiles and products are subject to bilateral quotas under the Multifiber Arrangement, and

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4/ See Letter of June 19, 1985, from James A. Baker, III, Chairman Pro Tempore, Economic Policy Council, et al; U.S. International Trade Commission, The Multifiber Arrangement, 1980-84, USITC Pub. 1693 (May 1985) at xii.

the volume of imports would surely increase in the absence of those quotas.

IV. Conclusion

Section 301 is intended by Congress to reach all types of unfair trade barriers, whether or not those barriers are inconsistent with or contravene international legal obligations. Among the most visible and serious of trade barriers are excessive tariff rates, and it is inconceivable that Congress intended to exclude tariffs from the broad scope of unfair and unreasonable trade barriers remediable under Section 301. Where a tariff is excessive, as indicated by a comparison with general tariff levels and with other countries' tariffs on that product, and denies fair and equitable market opportunities to U.S. goods, as indicated by a low import penetration level despite product acceptablility and cost competitiveness, the tariff may be deemed "unreasonable", even if justifiable under the GATT or any other international agreement.

Mr. GUARINI. Thank you, Mr. O'Connell.

Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman, and Mr. O'Connell.

What is the dollar volume of chocolate and confection consumption annually in the United States, in ballpark figures?

Mr. O'CONNELL. The annual consumption?

Mr. CRANE. Right, in dollar terms.

Mr. O'CONNELL. It is around $9 billion, maybe a little more.

Mr. CRANE. Around $9 billion. What is the dollar volume in foreign markets of U.S. exports annually roughly?

Mr. O'CONNELL. About $50 million.

Mr. CRANE. Million or——

Mr. O'CONNELL. Million.

Mr. CRANE. $9 billion at home, $50 million abroad?

Mr. O'CONNELL. Yes, sir.

Mr. CRANE. Do the Canadians, especially, but not confined to them, export a lot of chocolate and confections in our markets?

Mr. O'CONNELL. The balance between the Canadians and United States is about equal. They export into our market semifinished products which are somewhat different from the branded products that we probably export to Canada.

Mr. CRANE. So of that $9 billion domestic figure, roughly $4.5 billion is imports, is that correct?

Mr. O'CONNELL. Oh, no, you mean of the $9 billion sold?

Mr. CRANE. Right, the domestic market consumption in dollar terms annually of chocolates and confections.

Mr. O'CONNELL. No, no, the amount of imports is roughly $380 million.

Mr. CRANE. $380 million.

Mr. O'CONNELL. Yes. These figures apply only to finished confectionery for retail sale. Canada imports semifinished products, the value of which are not included in the figures we have presented.

Mr. CRANE. Competing against $9 billion that represents the American manufacturers' market of chocolates and confections domestically.

Mr. O'CONNELL. Right.

Mr. CRANE. How about the percentage of sugar component in chocolates and confections, what is that?

Mr. O'CONNELL. Sugar represents roughly 50 percent of the raw ingredients in chocolate bars. In sugar confectionery it will be 50 to 65 percent.

Mr. CRANE. What impact would that have then on your domestic production if you were able to buy sugar at world prices rather than at our controlled prices here? I have heard the difference is 5 cents a pound the Canadians pay for sugar and you pay 22 percent because of our protectionist sugar industry.

Mr. O'CONNELL. The difference is greater than 5 cents a pound. Over the past year when world raw sugar prices were at 4 to 5 cents, the Canadian refined sugar prices were at 12 cents, we were paying 23 to 24 cents. It is about 12 cents a pound difference.

Mr. CRANE. So as far as the domestic market you are talking about a roughly 50 percent advantage.

Mr. O'CONNELL. That is right.

Mr. CRANE. Of exporters coming into this market.

Mr. O'CONNELL. That is right.

Mr. CRANE. The reason I raise these questions is that it seems to me that that, too, is a part of the problem you are confronted with as an industry; it is our quotas on sugar imports into this country, protecting our own sugar growers at considerable expense to the consumers of those products.

That is why I was curious what the rough dollar figure would be on that compared to the total volume of business that our manufacturers do abroad.

Mr. O'CONNELL. There is no question, Mr. Crane, that the domestic price for sugar has put U.S. manufacturers at a competitive disadvantage with imports, particularly from Canada in semifinished chocolate products, and from South American countries on finished bulk sugar confectionery. We always made the distinction between branded products and nonbranded products because we believe price is not the only factor in the consumer purchase of branded retail products.

It is the semifinished and bulk products which you referred to from Canada and elsewhere that are causing a particular problem, and where the disparity between the world price of sugar and other domestic prices is the big problem in these categories.

Mr. CRANE. I was looking at your first chart, the model of comparative costs with all these add-ons to get into that Japanese market and I am not much of a mathematician but that was at 200 yen to the dollar.

Last time I looked at it it was 175 to the dollar approximately. That may have changed.

Mr. O'CONNELL. It is about 180 yen to the dollar.

Mr. CRANE. At any rate, by my calculations that bottom figure for the Japanese product is 856 yen when they get all these add-ons for inland freight and export freight, insurance, and import duty at 20 percent and Customs clearance, and ours goes from an advantage of about $1.75 when you look at manufacturing costs, to $4.75. Their's is roughly $4.25 at that exchange rate.

But with that change that would almost identically reverse those figures.

Mr. O'CONNELL. That is right.

Mr. CRANE. With that additional 25 yen to the dollar reduction.

Mr. O'CONNELL. That is right.

Mr. CRANE. And I am not unsympathetic with you going after their restrictive practices but that would give you a comparative advantage over Japanese-manufactured chocolate with that additional 25 yen to the dollar reduction. Have you noticed a significant impact in price terms as far as access to the Japanese market?

Ms. BERNOT. Mr. Crane, perhaps I can help in responding to that.

It was difficult to choose a fixed exchange rate when this analysis was done for the USTR. The choice of 200 yen seemed like it was the most sound figure we could use at the time to demonstrate our point.

Your point is well taken, that the current exchange rate does tend to reverse the process. But again this movement may not last for very long and we have to try to use stable figure in the situation.

I think the ideal is to have tariff parity so that we don't have to be concerned about a fluctuation in exchange rates. We would have a reciprocal open market to each other's products.

Mr. CRANE. I agree with you there, I just think that we cannot avoid focusing on another component of our total trade problems, and with that additional 25 yen change, 175 versus 200, that would roughly make their domestic product 475 and the American imports 425.

That was just a quick calculation. I was wondering if you had experienced any change in market consumption because of that price change in our favor?

[The following was subsequently received:]

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RICHARD T. O'CONNELL
President-Treasurer
JOY KENNEDY HUGHES
Assistant Secretary

April 21, 1986

The Honorable
Philip Crane
Longworth House Office Building
Room 1035
Washington, D. C. 20515

Dear Mr. Crane:

I wanted to provide additional information on the question you raised during Trade Subcommittee hearings April 8th, as to whether the decline of the dollar against the Yen would offset Japan's 20% tariff on chocolate and improve the competitiveness of our exports.

Unfortunately, beneficial exchange rate fluctuations are not the easiest answer when the obstacle is a high, fixed tariff. A stronger yen-dollar ratio that enhances consumer purchasing power also improves the competitiveness of Japanese producers by lowering production costs.

Sugar and cocoa are dollar denominated in international markets. The depreciation of the dollar against the Yen significantly lowers the cost of producing chocolate in Japan because these two commodities make up about 81% of a chocolate product. For example, using the model we provided the Committee as a base, a depreciation from Y250 to Y175 reduces Japanese costs by approximately 18%. Japanese manufacturers' profit margins widen and there is greater flexibility to match and overwhelm our exports in a price competition.

There is no question that the Yen and the dollar should be more realistically valued both internationally and in relation to each other. There are benefits to both sides. But we must come back to the point of reciprocal fair market access which is the one element that should be a constant among changing economic variables.

We have a competitive export product that is blocked from expanding market share in Japan by strong domestic companies demanding the protection of a 20% buffer tariff. The U.S. market is open to all imports and tariffs do not compensate the industry for commodity price and exchange rate fluctuations. In the barrier free trading community so highly espoused by Japanese Government leaders, the next move on confectionery is for Japan to reach tariff parity with the U.S. rate of 7%.

Sincerely,

Richard T. O'Connell
President

Mr. O'CONNELL. Generally speaking, Mr. Crane, there is a 6-month lag on many of these shipments, so we probably won't be able to tell significantly maybe this fall simply because chocolate shipments decrease in the summertime.

We probably won't be able to tell until fall what have been the effects of the exchange rates in increasing our market share in Japan.

Mr. CRANE. Hopefully that won't go back to 200 yen to the dollar by then that the exchange rates were at.

As Mr. Kirkland indicated earlier, they are still about 40 percent higher to our disadvantage than the ratio of the dollar to foreign currencies in 1980.

On the other hand, I think the tradeoff that he was referring to was the 3 years of double-digit inflation to produce an undervalued dollar, so if this is the equilibrium we will all be better served by that ingredient.

I commend you with respect to the problem that you set forth in your paper and your remarks that hopefully in this new round of GATT negotiations there might be some consensus on trying to establish some consistency in terms of what tariffs should be on products. Again, I commend you for your testimony and we can hope and pray Mr. Yeutter is successful in these upcoming negotiations.

Thank you.

Mr. O'CONNELL. Thank you.

Mr. GUARINI. Thank you, Mr. Crane.

Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman.

Mr. O'Connell, I am having a little trouble with the idea here. As you correctly stated, the subcommittee has been very interested in seeing you open up markets that have been closed to you. I think we want to preserve that record. There is a problem, however, in dealing with tariffs which are bound and which we have negotiated ourselves.

And as I thought I understood your testimony to be, we should now declare that the tariffs that we negotiated to be unfair and unreasonable. Did I misunderstand you?

Mr. O'CONNELL. No, I don't believe so. There are several levels in negotiation, of course, there are the bilateral and multilateral negotiations involved in the GATT rounds, and we also have the problem of agriculture subsidies and a number of other items so that we cannot really isolate all the issues into one formula.

But we believe there is action available under section 301 that would have an impact, particularly on the Japanese and in Taiwan and South Korea. Those three markets, Congressman, are roughly 190 million people. We see them as an opportunity to export a considerable amount of our products to those countries.

Our products have a good image in those countries. We see section 301 as a possibility to further encouraging them to meet our levels of duty.

As you can see, they have made adjustments. South Korea indicates they may do more by the time the Olympics come in 1988. The Taiwanese are listening. But if they felt that there was the leverage in the section 301 action, that they might move quicker.

The new GATT rounds will take 5 years, we would like to see action sooner.

Mr. FRENZEL. I think you are dead right on that.

GATT is going to take a long time. The trouble is that it was in GATT where we agreed to whatever the tariffs are now and I think it is section 301's work to prove some kind of market closing in addition to a high tariff, but I think it is very difficult for us to go forward on the basis that a tariff which we negotiated is on its face unreasonable and I think perhaps it requires some bilateral negotiation which might be accomplished before the multilateral is completed. Perhaps we have some clout that we could use that may be external to this case, but I think you have given us a very difficult assignment based on previous agreements that we have made.

Mr. O'CONNELL. We know it is a difficult assignment. We believe it should be explored in the context of giving the same protection as you would if you were applying the quota system under any other trade law.

Mr. FRENZEL. I hope some good comes out of it. Are you a brand merchandiser?

Mr. O'CONNELL. We represent all kinds of manufacturers. We represent those who manufacture semifinished products, who sell in bulk or package for others and those who are brand merchandisers.

Mr. FRENZEL. Are we talking for export purposes, mostly about branded merchandise?

Mr. O'CONNELL. Branded and bulk. Some of our member companies are developing relationships with Japanese companies and are making their product here and shipping it to Japan for rewrapping or putting into packages.

Mr. FRENZEL. Do we have major competition from the EC?

Mr. O'CONNELL. The EC has been the major competition in the markets I have described here today, although I would say at this point we are winning the markets in those areas.

Mr. FRENZEL. If we were lucky enough to negotiate or to force a lower tariff rate, the EC would have the advantage of it, too, we assume.

Mr. O'CONNELL. Certainly. We are not asking for any particular advantage for ourselves. We want to see not only Japan, Taiwan, and South Korea, but the EC also have roughly a 7-percent duty. Theirs is much higher.

When add-ons for currency adjustments and their sugar program are considered, we are talking about roughly a 20-percent ad valorem duty into the EEC. So we are using Japan primarily as an example. The same principal would apply to the European Common Market.

Mr. FRENZEL. I guess we have a lot more leverage in Korea, Taiwan and in Japan. Is the domestic industry a strong one in Japan or is there very little?

Mr. O'CONNELL. They have a strong industry. About 90 percent of the market is dominated by five major companies.

Mr. FRENZEL. Do those companies export as far as you know?

Mr. O'CONNELL. Yes, they do some exporting to the United States and to Taiwan. One of them has a factory in Michigan.

Mr. FRENZEL. Are they large companies that we would have heard of?

Mr. O'CONNELL. Yes. Yes. They are on a par with some of the United States companies.

Mr. FRENZEL. Who is the one, for instance, that has a plant in Michigan?

Mr. O'CONNELL. Lotte.

Mr. FRENZEL. Thank you very much. The testimony has been most instructive.

Mr. GUARINI. Mr. O'Connell, in spite of the closed markets, is the chocolate industry alive and well? Are they in a good financial position and growing in their profit position?

Mr. O'CONNELL. The U.S. chocolate industry?

Mr. GUARINI. Yes. A $9 million market. Is there any hardship?

Mr. O'CONNELL. I don't know what the profitability is of many of our companies. A number are privately held. Some are reasonably profitable. We always want to grow more. We have been growing particularly over the last 4 or 5 years.

Mr. GUARINI. You don't have any escape clause cases section 201 suits you would possibly bring in?

Mr. O'CONNELL. We don't have any section 201 cases, no.

Mr. GUARINI. Just one curiosity.

Mr. O'CONNELL. So I won't mislead anybody, we requested import restrictions on four semi-finished products because of the disparity between the world sugar price and the U.S. sugar price. This action was requested under section 22 of the Agriculture Adjustment Act.

Mr. GUARINI. From my travel, having been in Spain and Italy and France and Belgium, I know that European chocolate is far more expensive than the chocolate that I buy here in the United States. Is that a correct observation? I have always wondered why I would pay 40 American dollars a pound for some chocolate that I had purchased in Madrid. Now that economy is nowhere near like our economy.

Do you have a good opportunity of exporting to the Common Market because of their high chocolate prices that they have?

Mr. O'CONNELL. We do not export a lot to the EEC. They have a very strong industry there and also there is roughly a 20 percent dutiable barrier on products entering the EC. Some of those products you are referring to are specialty products. The average European chocolate or sugar confectionery would not be in that price class.

Mr. GUARINI. I know that, but I never saw anything like that here. I know Godivas are expensive, but by the same token I was surprised how high good chocolate was in Europe and all over Europe.

Mr. O'CONNELL. We believe our products are high quality and not quite as expensive.

Mr. GUARINI. I want to thank you very much, Mr. O'Connell, for bringing that picture to us. This concludes our hearing for today.

I am sorry, Mr. Chairman.

Chairman GIBBONS. That is all right. You are doing a good job. I want to say I am a regional chocoholic around here and I really enjoy chocolate.

Mr. FRENZEL. I hope you are not discouraging Guarini just when he was about to adjourn.

Chairman GIBBONS. No. I am going to have him adjourn us here. I appreciate your testimony.

I know how you are discriminated against and what needs to be done to open up the markets and I hope we can get it done.

Mr. O'CONNELL. We thank you for your support, Mr. Chairman.

Chairman GIBBONS. Keep making it. I need it.

Mr. Chairman?

Mr. GUARINI. Are you ready for the speech Marion wrote for me? This concludes our hearing for today. We will resume on Thursday at 9:30 in the same room, 1100 Longworth, rather than B-318, the Rayburn Building, as it was originally announced.

The meeting is adjourned.

[Whereupon, at 3:50 p.m., the hearing was adjourned, to reconvene Thursday, April 10, 1986, at 9:30 a.m.]

TRADE REFORM LEGISLATION

THURSDAY, APRIL 10, 1986

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman GIBBONS. Good morning, ladies and gentlemen.

This is a meeting of the Subcommittee on Trade, of the Committee on Ways and Means, and we are off on an important project today, getting the views of the Members of Congress about certain things that ought to be done in the law. Our first witness is the Honorable Stan Lundine, a Member of Congress from New York, who I have had the privilege of getting to know and work with and am a great admirer of.

Stan, you have got the floor.

STATEMENT OF HON. STAN LUNDINE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. LUNDINE. Thank you very much, Mr. Chairman.

At the outset I want to compliment you for your efforts to move legislation forward expeditiously in the House to meet Speaker O'Neill's May deadline for taking a trade bill to the floor.

Chairman GIBBONS. And we shall make it.

Mr. LUNDINE. As you may recall, I stated my concerns about the serious ramifications of a large U.S. trade deficit when I testified before you in April 1984.

Chairman GIBBONS. I can remember you writing me even earlier than that, Stan, and asking a lot of intelligent questions. So go right ahead.

Mr. LUNDINE. Thank you, Mr. Chairman.

Unfortunately, in the last 2 years our trade deficit has continued to increase and we have become a net debtor nation for the first time since World War I. This situation is unsustainable. It is time for Congress to act. I believe legislation is needed to provide a trade policy for the United States which can put us on a path toward substantially lower trade deficits.

While some recent progress has been made in our chronically inflated and unstable dollar on exchange markets, our dollar remains 20- to 30-percent overvalued and uncompetitive.

I might add that that improvement in exchange rates is not uniform. We hear so much about the yen, but those of us living near

the Canadian border continue to have a problem with the Canadian dollar, and they are our largest trading partner. Many other currencies have not become better balanced with the American dollar.

Very little progress has been made in resolving other components of our $150 billion trade deficit. Almost the entire reduction in last month's trade figures was due to falling oil prices. I find it ludicrous that we would jump for joy over having only a $12 billion trade deficit in 1 month.

Later this morning, the Banking Subcommittee, which I chair, will mark up legislation having to do with Third World debt, which is also having a serious dampening effect on U.S. exports. The Banking Committee has already reported out legislation to put in place a long-term program for exchange rates and to deal with the unfair use of mixed credits in the international competitive economy.

But any effort to address our trade deficit must also include an aggressive program to stop unfair trading practices of our international competitors. I wholeheartedly endorse the efforts you are making in your discussion draft to deal with this persistent problem.

My specific purpose in being here today is to focus on one particular section of our trade laws, section 337, dealing with protection of U.S. intellectual property. As you may know, Mr. Frenzel and I have introduced legislation, H.R. 4312, which is very similar to section 161 of the subcommittee's draft discussion document.

The objective of both proposals is precisely the same: that is, to protect U.S. intellectual property from unlawful infringement by imports. I urge you to retain this section as you move forward to report out a final bill to the full House. Technological innovation has become a crucial factor of production in the modern industrialized, internationalized economy. If we are to compete effectively in the international marketplace, we must guarantee our inventors protection of their intellectual property rights.

Currently our trade laws do not adequately protect innovators from infringement by imports. As you know, section 337 is the primary enforcement mechanism against such infringement. The law has a number of conditions that must be met before relief is granted which are difficult and expensive to satisfy. Moreover, the test for relief for a foreign infringer is much more stringent than is required under our own domestic intellectual property laws.

In the United States, a patent holder must only prove infringement to get relief in a district court from product or process infringement. Under section 337, a petitioner must overcome several evidentiary hurdles. First, he has to prove his patents have been infringed. Second, he must prove that there is a domestic industry in the United States using the patent.

Third, this domestic industry must be effectively and economically operated. Fourth, he must prove that the infringement has had the effect or tendency of distroying or substantially injuring the domestic industry. Finally, after overcoming this heavy evidentiary burden, relief can be granted if the International Trade Commission finds that relief is in the public interest.

The law should not make it so difficult to obtain relief from unfair infringing imports. I support the proposal contained in your discussion draft to remove two of the four evidentiary requirements in the law, the injury requirement and the requirement that the industry be economically and efficiently operated.

Removal of these burdensome provisions has bipartisan support. The administration has testified in support of removing these provisions and that doing so is consistent with GATT. A 1982 GATT panel reviewing section 337 found that the injury requirement was irrelevant to the law. Removing the injury requirement is particularly important in emerging high-technology industries.

The mere notion of having to demonstrate injury in a tangible sense through lost sales or declining market fails to acknowledge the economics involved in a startup industry based on a revolutionary technology.

Mr. Chairman, I would like to share with you and the subcommittee the experience of a company in our congressional district because I think it is so illustrative of the point involved here. Corning Glass Works is the world pioneer of optical fiber. It failed to secure relief under section 337 from Japanese infringement of their pioneering patents purely because they could not prove substantial injury to their sales or markets in an environment where the world demand for optical fiber is growing exponentially.

In the final analysis, however, what might have been at stake in the Corning case is the long-term domination of a multibillion dollar world fiber optic industry. As we sit here today, the Japanese continue to violate Corning's patents to establish a competitive niche in the international fiber marketplace.

Some who are opposed to removing these onerous and unfair requirements from the law argue that to do so would turn the ITC into a patent court. The fact is, though, that removing the injury and economically and efficiently operated requirements from the law will still require considerable ITC expertise to make determinations about the existence of a domestic industry and the public interest.

The courts are not equipped to make either of these determinations. Moreover, the International Trade Commission has built up considerable expertise regarding intellectual property rights over the years through its administration of section 337.

I understand that there is a draft proposal from a House Judiciary Subcommittee which would not eliminate the injury requirement from section 337. Instead, this proposal would establish the presumption of injury in intellectual property cases where infringement is found to have occurred. I feel strongly that a presumption of injury is simply not enough. Its effect would only be to shift the burden of proof.

The infringer would be able to prevent the intellectual property holder from getting relief by merely proving that he has not been substantially injured. Under such a circumstance, the presumption could be effectively rebutted and the relief would not be granted.

Strengthening our trade laws to deal with unfair trade practices is essential to reducing our trade deficit and preserving our long-term competitiveness.

I appreciate the opportunity to express my thoughts on this issue before you and look forward to working with you and your committee in the weeks ahead to achieve successful passage of a meaningful, comprehensive trade bill.

[The prepared statement follows:]

Testimony
Congressman Stan Lundine
Trade Subcommittee
House Ways and Means
April 10, 1986

At the outset, I want to compliment you, Mr. Chairman, for your efforts to move legislation forward expeditiously in the House to meet Speaker O'Neill's May 12th deadline for taking a trade bill to the floor. As you may recall, I stated my concerns about the serious ramifications of a large U.S. trade deficit when I testified before you in April of 1984. Unfortunately, since that time our trade deficit has continued to increase and we have become a net debtor nation for the first time since 1914. This situation is unsustainable. It is time for the U.S. Congress to act.

I believe legislation is needed to provide a trade policy for the United States which can put us on a path towards substantially lower trade deficits. While some recent progress has been made to deal with our chronically inflated and unstable dollar on exchange markets, our dollar still remains twenty to thirty percent overvalued and uncompetitive. Very little progress has been made on resolving other important components of our $150 billion trade deficit. Almost the entire reduction in last month's trade figures was due to falling oil prices, not any improvement in our merchandise trading posture.

Later this morning, the Banking subcommittee I chair will mark up legislation to address the problem of third world debt which is having a serious dampening effect on U.S. exports. The Banking Committee has also reported out legislation to put in place a long term program for exchange rates and to deal with the growing unfair use of mixed credits in the international economy.

But, any effort to address our trade deficit must include an aggressive program to stop unfair trading practices of our international competitors. I wholeheartedly endorse the efforts you are making in your discussion draft to deal with this persistent problem. My purpose today is to focus on one particular section of our trade laws, Section 337, dealing with protection of U.S. intellectual property.

As you may know, Mr. Frenzel and I have introduced legislation, H.R. 4312, which is very similar to Section 161 of the subcommittee's draft discussion document. The objective of both proposals is precisely the same, that is, to protect U.S. intellectual property from unlawful infringement by imports. I urge you to retain this section as you move forward to report out a final bill to the full House.

Technological innovation has become a crucial factor of production in the modern internationalized economy. If we are to compete effectively in the international marketplace, we must guarantee our inventors protection of their intellectual property rights.

Currently, our trade laws do not adequately protect innovators from infringement by imports. As you know, Section 337 is the primary enforcement mechanism against such infringement. The law has a number of conditions that must be met before relief is granted which are difficult and expensive to satisfy. Moreover, the test for relief from a foreign infringer is much more stringent than what is required under our own domestic intellectual property laws.

In the United States, a patent holder must only prove infringement to get relief in a district court from product or process infringement. Under Section 337 a petitioner must overcome several evidentiary hurdles. First, he has to prove his patents have been infringed. Section, he must prove that there is a domestic industry in the United States using the patent. Third, this domestic industry must be efficiently and economically operated. Fourth, he must prove that the infringement has had the effect or tendency of destroying or substantially injuring the domestic industry. Finally, after overcoming this heavy evidentiary burden, relief can be denied if the International Trade Commission finds that the relief is not in the "public interest".

The law should not make it so difficult to obtain relief from unfair infringing imports. I support the proposal contained in your discussion draft to remove two of the four existing evidentiary requirements in the law--the injury requirement and the requirement that the industry be economically and efficiently operated.

Removal of these burdensome provisions has bi-partisan support. The Administration has testified in support of removing these provisions and that doing so is consistent with GATT. A 1982 GATT panel reviewing Section 337 found that the injury requirement was irrelevant to the law.

Removing the injury requirement is particularly important to emerging high technology industries. The mere notion of demonstrating injury in a tangible sense through lost sales or declining markets fails to acknowledge the economics involved in a start-up industry based on a revolutionary technology.

For example, Corning Glass Works, the world pioneer of optical fiber, failed to secure relief under Section 337 from Japanese infringement of their pioneering patents purely because they could not prove substantial injury to their sales or markets in an environment where the world demand for optical fiber was growing. In the final analysis, however, what might have been at stake in the Corning case is the long term domination of the multi-billion world fiber optic industry. As we sit here today, the Japanese continue to violate Corning's patents to establish a competitive niche in the international fiber optic marketplace.

Some who are opposed to removing these onerous and unfair requirements from the law argue that to do so would turn the International Trade Commission into a patent court. The fact is, though, that removing the "injury" and "economically and efficiently operated" requirement from law will still require considerable

I.T.C. expertise to make determinations about the existence of a domestic industry and the public interest. The courts are not equipped to make either of these determinations. Moreover, the I.T.C. has built up considerable expertise in the intellectual property rights area over the years through its administration of Section 337.

I understand that there is a draft proposal from a House Judiciary Subcommittee which would not eliminate the injury requirement from section 337. Instead, this proposal would establish the presumption of injury in intellectual property cases where infringement is found to have occurred.

I feel strongly that a presumption of injury is simply not enough. Its effect would only be to shift the burden of proof from the complaintant to the respondent. The infringer would be able to prevent the intellectual property holder from getting relief by merely proving that he has not been substantially injured. Under such a circumstance, the presumption could be effectively rebutted and relief would not be granted.

Strengthening our trade laws to deal with unfair trade practices is essential to reducing our trade deficit and preserving our long term competitiveness. I appreciate the opportunity to express my thoughts on this issue before you and look forward to working with you in the weeks ahead to achieve successful passage of a meaningful trade bill in the House.

Chairman GIBBONS. Mr. Lundine, I am going to be brief with you because I know you have got to go to your own committee meeting working on this same subject this morning.

I want to commend you and Mr. Frenzel also for having introduced the bill that you did. I frankly have no qualms about passing it as you-all have proposed it. I think it is a good piece of legislation. I don't know where in the world we came up with 337 and all of this treatment of foreigners better than we treat our own nationals.

I believe in national treatment. If we could have national treatment, most of the markets of the world would be open, and I want national treatment in this area as badly as in any other area. So I think you have got a good piece of legislation.

Mr. LUNDINE. Thank you very much, Mr. Chairman. I wouldn't be here preaching to the choir but for the fact that there is this threat of other committees, and I appreciate your support.

Chairman GIBBONS. We are going to move as rapidly as we can on all of these.

Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman.

I, too, want to commend you, Stan, as well as Bill Frenzel for this legislation and guarantee you that it has bipartisan support. In fact, I can't imagine who could raise an objection to it, and I agree with the chairman that we are treating foreigners in a way that we wouldn't permit our own people to behave. There is nothing quite so sacred in our system beyond life and liberty as property, and intellectual property should enjoy the same kinds of guarantees to individuals manufacturing here in the United States in its application to people abroad as it does here in the States.

So I simply congratulate you on your initiative and reassure you we have got good bipartisan support.

Mr. LUNDINE. I thank the gentleman.

Chairman GIBBONS. Mr. Duncan.

Mr. DUNCAN. I have no questions.

Chairman GIBBONS. Thank you very much, and we look forward to meeting you in the Rules Committee. Bring your part up and we will have our part there, too. We will put it all together.

Our next witness is the U.S. Senator, the Honorable Frank Lautenberg. I was trying to shorten your name here.

Senator LAUTENBERG. Mr. Chairman, as long as you identify me from the wonderful State of New Jersey, we are in good shape.

Chairman GIBBONS. Well, we have an excellent Member from the wonderful State of New Jersey and an excellent staffer from the wonderful State of New Jersey here, so we are happy to have you here, sir.

STATEMENT OF HON. FRANK R. LAUTENBERG, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you, Mr. Chairman and members of the subcommittee. I am pleased to have the opportunity to come before you today. I applaud your commitment to move forward to forge a trade policy that will right the trade balance and give America a fair chance to compete.

America's economic edge is its technology and innovation, but if we are to enjoy the fruits of our labor, the jobs and growth that come from innovation, we need to stop the piracy of American intellectual property. I refer to U.S. patents, copyrights, trademarks, trade secrets, and semiconductor masks.

With disturbing frequency, foreign firms pirate American inventions and then ship those products back here. The ITC estimated back in 1982 that infringements of U.S. intellectual property cost Americans 131,000 jobs in just five selected industrial sectors. Piracy costs those sectors $5.5 billion in annual sales. Estimates of total losses range from $8 to $20 billion.

Now, section 337 of the Tariff Act of 1930 provides a remedy. It empowers the ITC to exclude imports when the importer engages in "unfair acts." The law is used to keep out pirated products, but the law falls short. We need to strengthen it, and that is what we would do in S. 1869, which is cosponsored by 18 of my colleagues in the Senate.

The current law throws up barriers that have blocked relief for a range of firms, from the New York inventor of fiber optic waveguide to a Tennessee maker of softballs, to the California movie studio that licenses the Gremlin character.

The main problem is this. It isn't enough to prove piracy. One has to prove that it hurts. One has to prove that imports would destroy or injure a United States industry, an industry that is efficient and economically operated.

To exclude foreign goods, proof of piracy should be enough. Infringement is injury, and we need to make that clear, but we can't stop there. The so-called industry requirement is also too broad.

Inventors much exploit their invention by production in the United States. For better or for worse, we are more and more an information-based economy, and for those who invest in research, in marketing, in licensing, there should be a remedy. Let me give you one example.

There is in my State a startup biotech company. It is new, it is young. Its product is its patents. It hasn't yet reached the stage for manufacturing. It doesn't have the money to do that. But it will reach that point by licensing its patents to others and collecting royalties.

Should we destroy that firm's right to exclude the works of pirates? Certainly I don't think so. I propose additional changes in section 337. The ITC should act promptly on emergency complaints. Where a key shipment of infringing goods is on its way or a critical selling season is approaching, justice delayed is justice denied.

The law should be clear that a firm, once found guilty and subject to an exclusion order, has the burden of proof if it wants to reopen the case, and it should be barred from raising claims that it could have raised before. We have seen a case where a company has been declared infringing and injuring an industry or a company in my State and they have reopened the case after being declared as an infringer looking for a new avenue to open it. Well, we think they should have brought that evidence up in the first opportunity.

The law should provide that where a party seeks a limited exclusion order and the defendant defaults without good cause, relief should be forthcoming.

Mr. Chairman, I recognize reform of section 337 isn't enough. We also need to make it a violation of domestic patent law if someone imports a product made abroad with a process patented here at home, and I join with Senator Mathias in sponsoring S. 1543 to do just that, and that is to protect the process as well.

When an American inventor's product is copied in one country and sold in another, U.S. exports are hurt. We must withdraw trade benefits from nations that deny adequate and effective intellectual property right protection.

Mr. Chairman, the causes of our trade imbalance are complex and crafting a solution is difficult. But when imports are the product of stolen, U.S. technology, there should not be any question. We ought to act promptly on that. I understand that reform of section 337 is included in the subcommittee's discussion draft and I urge you to consider the approach that we have taken in S. 1869.

I look forward to working with you and other members of the committee to right the wrong.

[The prepared statement follows:]

STATEMENT BY SENATOR FRANK R. LAUTENBERG
Before the Subcommittee on Trade
Committee on Ways and Means
House of Representatives
April 10, 1986

Mr. Chairman and members of the subcommittee, I am pleased to come before you today. I applaud your commitment to move forward, to forge a trade policy that will right the trade balance and give America a fair chance to compete.

America's economic edge is its technology and innovation. But, if we're to enjoy the fruits of our labor -- the jobs andgrowth that come from innovation -- we need to stop the piracy of American intellectual property. I refer to U.S. patents, copyrights, trademarks, trade secrets and semiconductor masks.

With disturbing frequency, foreign firms pirate American inventions, and then ship those products back here. The International Trade Commission estimated, back in 1982, that infringement of U.S. intellectual property cost Americans 131,000 jobs, in just 5 selected industrial sectors. Piracy cost the Nation's businesses $5.5 billion in annual sales. Estimates of total losses range from $8 billion to $20 billion.

Section 337 of the Tariff Act of 1930 provides a remedy. It empowers the ITC to exclude imports when the importer engages in "unfair acts." The law is used to keep out pirated products. But the law falls short. We need to strengthen it, and that's what we would do in S. 1869, which I introduced along with 18 of my colleagues in the Senate.

Current law throws up barriers that have blocked relief for a range of firms:

* from the New York inventor of fibre optic waveguide...
* to a Tennessee maker of softballs...
* to the California movie studio that licenses the Gremlin character.

The main problem is this: it isn't enough to prove piracy. One has to prove it hurts. One has to prove that imports would destroy or injure a U.S. industry... an industry that is efficient and economically operated.

To exclude foreign goods, proof of piracy should be enough. Infringement is injury. We need to make that clear.

But we can't stop there. The so-called industry requirement is also too broad. Inventors must exploit their invention by production in the U.S. For better or worse, we are more and more an information based economy. For those who invest in research... in marketing... in licensing... there should be a remedy.

Let me give you one example. There is a start-up biotech firm in my state. Its product is its patents. It hasn't reached the stage to manufacture. It doesn't have the money. But it will reach that point, by licensing its patents to

others. Should we deny that firm the right to exclude the works of pirates? I say no.

I propose additional changes in section 337.

* The ITC should act promptly on emergency complaints. Where a key shipment of infringing goods is on its way, or a critical selling season is approaching, justice delayed is justice denied.

* The law should be clearer that a firm, once found guilty and subject to an exclusion order, has the burden of proof if it wants to reopen the case and it should be barred from raising claims it could have raised before.

* The law should provide that where a party seeks a limited exclusion order, and a defendant defaults without good cause, relief should be forthcoming.

Mr. Chairman, I recognize, reform of section 337 is not enough. We also need to make it a violation of domestic patent law, if someone imports a product made abroad with a process patented here at home. I joined Sen. Mathias in sponsoring S.1543, to do just that.

We need nations to respect intellectual property, even when direct trade with the United States is not involved. When an American inventor's product is knocked off in one country, and sold in another, U.S. exports are hurt. We must withdraw trade benefits from nations that deny adequate and effective intellectual property right protection.

Mr. Chairman, the causes of our trade imbalance are complex. Crafting a solution is difficult. But, when imports are the product of stolen U.S. technology, there should be no question. We should act.

I understand that reform of section 337 is included in the subcommittee's discussion draft. I urge you to consider the approach we have taken in S.1869. And I look forward to working with you.

Thank you.

Chairman GIBBONS. Thank you, sir.

I am sure you heard what I told Mr. Lundine about my support of it. For the life of me, I cannot explain why we got the law in such bad shape as it presently is. I am glad that you have pointed it out and I can assure you we are going to take some kind of constructive action to get it done this year.

Mr. Crane.

Mr. CRANE. Thank you. And I just want to welcome Senator Lautenberg's and Senator Mathias' contribution to this, and it is a comfort, I am sure, to our colleagues Stan Lundine and Bill Frenzel to know that not only is there bipartisan support but there is bichamber support and I am confident that there will be a long overdue redress of a big grievance.

Thank you for your testimony, sir.

Senator LAUTENBERG. Thank you.

Chairman GIBBONS. I know Congressman Guarini wants to say something down there, but I see him huddled and I am not going to interrupt him until he gets through huddling.

Frank.

Mr. GUARINI. I want to compliment my Senator from New Jersey on his bill on section 337. I think there is a very universal support, both on the Republican and Democratic side, for this concept. And certainly one of the greatest losses that we have in our trade, estimated between $8 and $20 billion, is the pirating of our copyrights, our patents, and our trademarks.

So I think this is a very important issue, Mr. Chairman, that we should address and certainly take up with all seriousness the bill that you have presented over on the Senate side.

I am rather familiar with some of these problems and think that it is a very important matter for GATT to take this up, also, in our next round. It should be a very high priority. So there is not the tilted playing field that we have, concerning the technology that we have in our country and the various copyrights.

So I want to welcome you and thank you, and apologize to you, my dear Senator, for having been late and not having heard the main thrust of your comments. But after, if there are any questions, I will then follow.

Mr. Chairman, are there going to be any questions?

Chairman GIBBONS. No, we have just about completed, Senator. We appreciate it.

Senator LAUTENBERG. Well, I appreciate the opportunity to be here before you. Congressman Guarini and I are the frankest members of the delegation.

But I do want to say that——

Chairman GIBBONS. We have got a frank member of our staff, too.

Senator LAUTENBERG. Is that so?

Before having the opportunity to serve in the U.S. Senate, I was in the data processing business and spent 35 years of my life doing that. Mr. Chairman, I think it is obvious that we, in America, can no longer compete in some of the basic products. Regrettably, I think we have given others the opportunity to do that and I hope we are not going to look back one day and rue the day that we let that escape from us.

But I think we will, by the way. It may appear odd coming from me, because I am represented often as Mr. Technology, having been in the data processing business so long.

But in this information era, in which we now live, it is essential that the products, the design, the developments, and the ingenuity of the American mind has the opportunity to continue its eminence. And the only way we are going to do it is to make sure that we reap the rewards from the things that we work so hard for, that we take the risks for. Everybody knows that we look only at the successes, but often the failures outnumber them not only in instances but in terms of costs, as well.

So when we do have something that is worth sales in the marketplace and worth jobs and worth exports, certainly we owe it to our constituents, the business community, and the jobs that it produces, to make sure that the products that we develop are protected.

And I appreciate the opportunity, Mr. Chairman, to work with you and colleagues of yours and mine. I think we will be able to fashion a good bill, one that says America means it when we say look, you can do business here, but you cannot rob us of our opportunity to do business elsewhere, nor to take our jobs away illegally.

So that is where we are at.

Chairman GIBBONS. I concur with you and the sooner that we get around to doing that, I think the easier time we are going to have persuading Americans that markets ought to be open and not restrained.

Thank you very much, sir.

Senator LAUTENBERG. Thanks for the opportunity.

Chairman GIBBONS. Our next witness is the Honorable Ed Zschau, a Member of Congress from California, and author of a report targeting the process of innovation.

Mr. Zschau, we welcome you.

STATEMENT OF HON. ED ZSCHAU, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. ZSCHAU. Thank you very much, Mr. Chairman.

I want to begin by commending you, not only for holding this hearing, but your leadership and the leadership of your subcommittee over a long period of time on the critical issue of international trade. And I also want to thank you for the opportunity to briefly share my views on this issue with you.

Our colleague, Congressman Lundine, talked about the problem that is a result of the enormous trade deficit, that it not only costs us jobs in the short run but because it cuts into the profitability of U.S. enterprises, it reduces the ability of U.S. enterprises to produce jobs in the future.

The response to that problem, that we have seen from sectors in the country, as well as in the Congress, is to reduce the trade deficit by curtailing imports.

I believe that such a protectionist response is not only a simple approach, but it is a wrong approach, a counterproductive approach.

The kind of approach that we should take we can learn from an analogy with international sports competition. We want to do well in the Olympic games, we want to win lots of medals, but we do not ban the good athletes from other countries in order to do so. Rather, we insist upon everybody playing by the same rules and then we work as hard as we can to achieve and to do our best.

It seems to me that in international economic competition, the same approach is appropriate. That is, we have to insist on everybody playing by the same rules, we have to negotiate and enforce fair trade agreements.

This has not been a priority of this Government in the past, but it must be in the future.

We must recognize, Mr. Chairman, that it is the U.S. Government's responsibility to protect U.S. enterprise, not from fair competition, but from unfair competition. It should self-initiate cases against unfair competition, such as dumping, denial of fair access to foreign markets, illegal subsidies.

The response when those self-initiated actions are taken should be swift and it should be effective. It should be across the board, not just a case here 1 year, or a case there, but across the board in heavy industry, electronics, and agriculture. And those self-initiated cases should be coupled with negotiations because the objective is not to keep out competition, but to make sure that the competition is fair.

My sense is that the laws on the books, the 1974 Trade Act, has most of the provisions we need in order to do what I just described, but the administration has to have a sense of urgency in order to follow through and use those laws. However, I believe that we need legislation to authorize the administration to enter into new GATT negotiations.

If the administration is not taking the action that I just described and establishing a fair trade regimen, then legislation could be enacted that gives a sense of urgency and streamlines procedures in order to establish fair trade.

Given that fair trade regimen, I think there is another thing that we, in Congress, must be aware of. And that is that all of the laws that we pass can have an impact, direct and indirect, on the ability of U.S. enterprises to be competitive. Our research policies, our tax policies, our fiscal and monetary policies, education policies, procurement policies all have an impact on the environment for competitiveness.

I would like to suggest to you, Mr. Chairman, and this subcommittee—as well as my colleagues—is when we are considering legislation such as the tax reform bill or such as our spending priorities, that we should use, as a fundamental criterion, the competitiveness criterion. Will that legislation enhance the ability of U.S. enterprise to be competitive, or will it get in the way.

My constituent John Young, the president of the Hewlett-Packard Co., chaired a Presidential Commission on Industrial Competitiveness. That was essentially the thrust of their recommendations. Let us make sure that the laws that we pass and the regulations we put in place provide an environment for competitiveness.

I, and the members of the Republican Task Force on High Technology Initiatives, have prepared an agenda which borrows heavily

from the Young Commission report. It has 11 specific recommendations to improve the environment for competitiveness.

Protecting intellectual property is an important one of those recommendations. Accordingly, I would like to add my voice to those others who came before me in support of the reform of section 337 which is so important in order to make sure that U.S. enterprises that develop new technology and intellectual property are protected from piracy and unfair competition.

Let me conclude, Mr. Chairman, by saying we need trade. We need free and fair trade. We must fight protectionism on the one hand, but on the other hand, we must insist on fairness and we must take an active role to protect U.S. enterprise against unfair competition. Also, we must provide the legislative framework to enable and give a sense of urgency to the administration to make sure that fair trade regimen exists. Finally, we must provide, through all of our legislative initiatives, an environment in which U.S. enterprise can rise to the competitive challenge that we face from around the world.

[An attachment to the statement follows:]

Targeting the Process of Innovation

second edition

An Agenda for Meeting America's Competitive Challenge

Recommendations Prepared By:
The Steering Committee of
The Task Force on High Technology Initiatives
House Republican Research Committee
U.S. House of Representatives
December 1985

The High Technology Industry Group at Deloitte Haskins & Sells is a leader in providing audit, tax and management consulting services to high technology companies. We believe that the future success of American high technology companies will be a major factor in keeping the United States competitive in world markets and will be a key element in our future growth. We are pleased to participate in the distribution of this booklet, *Targeting The Process of Innovation*, and enthusiastically encourage the support of the government in providing incentives to promote the continued growth of the high technology industry.

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Honorable Jerry Lewis, *of California*, Chairman
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Executive Summary

America's challenge today and for the future is to create enough new and satisfying jobs to employ our growing work force and to increase the standard of living for all Americans. The key to meeting this challenge is industrial competitiveness — our ability to develop and produce high quality goods and services at prices that are attractive to both foreign and domestic consumers.

Under President Reagan's leadership, our country has entered an era of prosperity that has not been experienced in two decades. However, some U.S. industries have been outpaced at home and abroad by more aggressive competitors. This has cost American jobs and has created a national awareness of the reality of global competition.

Some suggest that the best way to preserve American jobs is for our government to erect protectionist "fences" to limit foreign imports. We disagree.

We believe a far better policy is one that encourages America's workers and industries to rise up and meet the competitive challenge. Our primary problem is not the surge of imports, which always rise with strong U.S. economic growth. It's a lack of American exports. America can increase jobs and exports, but it can only do so by becoming more competitive.

U.S. leadership in technology and its applications has been a primary source of increased productivity, exports, and new jobs in the past. In order to strengthen our nation's competitiveness, government must minimize the barriers to innovation and productivity that exist in statutes and regulations. However, it is important to keep in mind that innovation and the creation of new technologies cannot be *forced* by government "targeting" of selected industries. Rather, economic growth and prosperity result from the vision and genius of individuals who have the financial resources and courage to take risks in exploring new ideas. As such, innovation can only be *fostered* by government policies that promote free enterprise and entrepreneurship.

We believe the proper role of government in helping American workers and companies meet the competitive challenge is to *target the process* by which new ideas and products are developed — *the process of innovation.* That is, our government should focus on removing unnecessary obstacles to growth to help create an environment in this country in which innovation, new ideas, and new companies are likely

to flourish and in which firms in mature industries can modernize. Making sure that such an environment exists is the best way government can help America increase its leadership in technology, jobs, and exports.

There are four conditions needed for an environment that promotes innovation:

- *A strong commitment to basic research and development,* to deepen and broaden our understanding of fundamental processes that will form the basis for industries, technologies, and products in the future;
- *Incentives for risk taking and capital formation* to promote the investment and innovation necessary for making technological advances, developing new products, establishing new companies, and rejuvenating mature industries;
- *An adequate supply of skilled people,* that provides a broad base of educated and well-trained citizens who can meet the challenges of a rapidly changing world;
- *Expanding market opportunities,* domestic as well as foreign, which requires a healthy domestic economic environment and aggressive trade policies.

The proper government policy for creating jobs and promoting exports is one that focuses on enhancing these prerequisites for innovation. It consists of specific legislative and regulatory initiatives that foster these conditions and avoids government actions that would weaken them. The specific initiatives needed will vary as actions are taken and events unfold, but there are specific actions that can and should be taken right now.

The following Agenda for Meeting America's Competitive Challenge contains 11 legislative initiatives that we believe the 99th Congress should enact to strengthen the prerequisites that are fundamental to the process of innovation. We have limited the Agenda to proposals that we think can and should be implemented in 1986. In developing this Agenda, the Steering Committee has consulted with over 60 experts in industry, government, labor, and academia in an effort to develop proposals that would be the most effective. The Steering Committee gave special consideration to the recommendations of the President's Commission on Industrial Competitiveness (PCIC). Five of the Commission's recommendations are endorsed in this Agenda. In addition, several proposals are identical to those presented in the Trade Partnership Act that was introduced by House Republicans on October 8, 1985.

BASIC RESEARCH & DEVELOPMENT
RECOMMENDATION

- Amend the Stevenson-Wydler Act to streamline and make uniform the procedures used by federal and national laboratories for entering into cooperative research and development agreements with private and local government entities, and provide greater monetary incentives for laboratories and their employees to transfer their technologies to the private sector.

INCENTIVES FOR RISK TAKING AND CAPITAL FORMATION
RECOMMENDATIONS

- Reform the tax code to reduce the cost of capital and improve those tax provisions that affect savings, investment, and productivity.
- Make permanent the research and development tax credit, and broaden its applicability to cover computer software and start-up companies.
- Permit enforcement of a domestic process patent against a product made by the patented process without proper authority in a foreign country.
- Amend the Freedom of Information Act by requiring that owners of proprietary information filed with the federal government be given the opportunity to challenge requests made under the FOIA for that information before it is released.

ADEQUATE SUPPLY OF SKILLED PEOPLE
RECOMMENDATIONS

- Create new incentives for worker retraining such as liberalizing Individual Retirement Account (IRA) rules, or forming similar Individual Training Accounts (ITAs), to allow individuals to set aside and later withdraw from their savings without penalty or taxation funds to pay for retraining.
- Permit participation of displaced workers in employment training programs without preventing them from receiving unemployment compensation.
- Continue to permit foreign nationals, educated in the U.S. in skill shortage areas such as science and engineering, to remain and work here after receiving their education if a position cannot be filled by a U.S. citizen.

EXPANDING MARKET OPPORTUNITIES
RECOMMENDATIONS

- Amend the Trade Act of 1974 to require that the International Trade Commission (ITC) report recommendations under Section 201 directly to the U.S. Trade Representative (USTR), and permit the USTR to provide interim relief pending the outcome of a Section 201 case.
- Amend Section 301 to clarify that the United States will consider the full range of competitor nation's trade practices when seeking trade reciprocity, and shorten the timetable for a decision on determining whether unfair or discriminatory practices exist.
- Substantially reduce the federal budget deficit by cutting spending.

Technology, Jobs, and Exports

America's Challenge: Global Competition

America's challenge today and for the future is to create enough new and satisfying jobs to employ our growing work force and to increase the standard of living for all Americans. The key to meeting this challenge is industrial competitiveness — our ability to develop and produce high quality goods and services at prices that are attractive to both foreign and domestic consumers.

Under President Reagan's leadership, our country has entered an era of prosperity that has not been experienced in two decades. Crippling inflation and unprecedented high interest rates have been reduced. Employment in the United States has reached record highs while job creation in many other industrialized countries has stagnated. In addition, growth in investment and research and development (R&D) expenditures by U.S. industry has reached rates not experienced in three decades.

However, some U.S. industries have been outpaced at home and abroad by more aggressive competitors. The following trends have brought trade policy to the political forefront:

- The United States' share in total world exports has steadily declined from 21% in 1960 to 12.6% in 1984.
- The U.S. trade deficit for 1985 is now approaching $150 billion, and the trade balance in manufactured goods has moved from a surplus of $11 billion in 1981 to a deficit of

$81 billion in 1984 — an unprecedented deficit equal to 10% of the value of manufacturing output.

- The volume of U.S. manufacturing exports in 1984 was 14% below the 1981 level, and has remained virtually unchanged since the 1981-82 recession.[1]

Since every $1 billion in exports creates approximately 25,000 jobs,[2] it is clear that many more Americans could be working if the United States were more competitive.

America Must Meet Its Competitive Challenge

Some suggest that the best way to preserve American jobs is for government to erect protectionist "fences" to limit foreign competition in the United States. We disagree.

We believe that a far better alternative to protectionism is a policy that encourages America's workers and industries to rise up and meet the competitive challenge. Our primary problem is not the surge of *imports*, which always rise with strong U.S. economic growth. It's a lack of American *exports*. America can increase jobs and exports, but it can only do so by becoming more competitive.

In order to strengthen our nation's competitiveness, government can help by minimizing the barriers to innovation and productivity that exist in statutes and regulations. U.S. leadership in technology and its applications have been a primary reason for increases in productivity, exports, and new jobs in the past. However, it is important to keep in mind that innovation and the creation of new technologies cannot be forced by government "targeting" of selected industries. Rather, economic growth and prosperity result from the vision and genius of individuals who have the financial resources and courage to take risks in exploring new ideas. As such, innovation can only be *fostered* by government policies that promote free enterprise and entrepreneurship.

Results From the First Task Force Agenda

The work of the Task Force to foster growth and exports began in the 98th Congress. In May 1984, we proposed 14 legislative initiatives aimed at fostering U.S. leadership in

technology and industrial competitiveness. The following seven of those initiatives are now law:

- "Increase emphasis on civilian basic research as recommended in the President's FY85 budget" (enacted in several public laws).
- "Modify antitrust laws to require that R&D joint ventures be judged by their competitive effects only and reduce the potential liability for damages from treble to actual damages" (Public Law 98-462).
- "Make permanent the moratorium on Treasury Regulation Section 861.8" (Public Law 98-369 extended the moratorium until December 31, 1985).
- "Extend intellectual property law to include semiconductor designs and masks" (Public Law 98-620).
- "Create a new export incentive to replace the Domestic International Sales Corporation (DISC) that the U.S. has agreed to discontinue" (Public Law 98-369).
- "Instruct our trade negotiators to seek elimination of trade barriers and extension of the GATT (General Agreement on Tariffs and Trade) to cover investments and services" (Public Law 98-573).
- "Focus and streamline export controls so they are more effective in preventing the trade-related transfer of militarily critical technologies to our adversaries while avoiding unnecessary obstacles to exports" (Public Law 99-64).

Government Should Target the Process of Innovation

In this second agenda, our philosophy remains the same: We believe the proper role of government in promoting industrial competitiveness is to *target the process* by which new ideas and products are developed — *the process of innovation.* That is, our government should focus on reducing the statutory and regulatory obstacles to help create an environment in this country in which innovation, new ideas, and new companies are likely to flourish and in which firms in mature industries can modernize. Making sure that such an environment exists is the best way government can help America increase its leadership in technology and industrial competitiveness.

There are four conditions needed for an environment that promotes innovation:

- *A strong commitment to basic research and development,* to deepen and broaden our understanding of fundamental processes that will form the basis for industries, processes, and products in the future;
- *Incentives for risk taking and capital formation* to promote the investment and innovation necessary for making technological advances, developing new products, establishing new companies, and rejuvenating mature industries;
- *An adequate supply of skilled people,* that provides a broad base of educated and well-trained citizens who can meet the challenges of a rapidly changing world;
- *Expanding market opportunities,* domestic as well as foreign, which requires a healthy domestic economic environment and aggressive trade policies.

The proper government policy for industrial competitiveness is one that focuses on these prerequisites for innovation. It consists of specific legislative and regulatory initiatives that foster these conditions and avoids government actions that would weaken them. The specific initiatives needed will vary as actions are taken and events unfold, but there are specific actions that can and should be taken right now.

A Competitiveness Agenda for 1986

A STRONG COMMITMENT TO BASIC RESEARCH AND DEVELOPMENT

Research is the essential underpinning of technological development throughout the world. We are strongly committed to assuring that the United States retains a leadership position in research. However, America must focus on how we can move beyond our present achievements, and meet the challenges of a rapidly changing global economy.

The Steering Committee noted a lack of consensus among those who reviewed earlier drafts of this Agenda regarding both the direction that federal science policy should take and whether current R&D programs are meeting national needs. In order to achieve greater consensus on these critical issues, we will conduct next year a thorough review of federal policies for setting research priorities and appropriating R&D funds to the many competing projects. In particular, the following questions should be addressed:

- *Where is the U.S. R&D effort heading?* Considering that the U.S. lags behind Japan, West Germany and other nations in civilian R&D as a fraction of gross national product,[3] we need to determine whether a better balance in research programs needs to be achieved to meet the competitive challenge.
- *Who sets U.S. R&D priorities?* Given that many different interests compete for limited funds, facilities, and other resources that are required to conduct successful basic research programs, we need to determine if Congress and executive agencies can improve their methods of allocating R&D dollars.
- *Is talent being wasted?* The Steering Committee has observed that considerable time and effort is spent by researchers in "grantsmanship" — the securing and retaining of funding from federal agencies. We seek to examine ways in which researchers can spend more time on research with fewer concerns about R&D budgets and grants.
- *Where do universities fit in?* Several of the experts who helped formulate our recommendations noted that academic

research facilities, where much of American science is carried out, are becoming increasingly obsolete. These facilities function as a focus for research that not only expands scientific and technological frontiers, but also provides training for future scientists and engineers. We need to find cost-effective ways to correct this problem.

- *Can federal and national laboratories be better utilized?* The Steering Committee believes we can do a better job of promoting utilization of federal research resources.

Making Federal Labs More Effective

A major step to improve the effectiveness of federal and national laboratories was taken with the enactment of the Stevenson-Wydler Technology Innovation Act in 1980. Section 11 of this Act mandates that federal laboratories transfer federally originated technology to state and local governments and to the private sector.

During the five years since the passage of the Act, there has been increasing interest in this country in harnessing American inventiveness in ways that help the American economy. It appears that the desire of industry, universities, non-profit organizations, and units of state and local governments to cooperate with the federal laboratories in programs of mutual interest has increased significantly.

The federal government funds approximately half of the U.S. total research and development, and much of this work is performed in government-owned laboratories. The national interest demands that these federal laboratories be more responsive to our economic need for their new technologies. These technologies must be transferred more effectively from the federal sector and translated into new commercial products and processes.

Our experience under Stevenson-Wydler has made the need for legislative changes apparent in a number of areas. Currently, there is a wide variance in the ability of government laboratories to enter into cooperative research and development arrangements with the private sector, universities, and other interested parties. Laboratories in some agencies

are reluctant to enter into cooperative arrangements because of the cumbersome, time-consuming process that is required. Other agencies have little or no statutory authority upon which to base such working relationships.

Even though Congress needs to make further investigations into the effectiveness of federally funded laboratories, we believe that legislative changes are needed now to improve the ability of the federal laboratories to identify innovations with commercial potential. In addition, incentives for improving technology transfer to the private sector can be enhanced by returning a portion of the royalties derived from commercialized, lab-developed technology to the laboratory. Such funds could be used to reward laboratory employees or to finance projects that Congress has not adequately funded.

BASIC RESEARCH & DEVELOPMENT
RECOMMENDATION

- Amend the Stevenson-Wydler Act to streamline and make uniform procedures used by federal and national laboratories for entering into cooperative research and development agreements with private and local government entities, and provide greater monetary incentives for laboratories and their employees to transfer their technologies to the private sector.

INCENTIVES FOR RISK TAKING AND CAPITAL FORMATION

Beyond the research stage, innovation occurs when there are adequate incentives and financing for risk taking and entrepreneurship so that new ideas and technologies will be pursued. Here, tax policy, intellectual property rights, and regulations play a significant role.

Tax Policy

In examining the root-causes of the trade deficit and the ingredients necessary for the U.S. to increase its competitive edge in the world marketplace, one issue consistently emerges: the cost of capital. According to a study by George Hatsopoulos for the American Business Conference, the cost of capital for

U.S. businesses was more than twice as high as in Japan during 1961-83. Today, capital costs for 10-year corporate development projects are four times greater in the United States than in Japan.[4] An analysis of capital costs by the President's Commission on Industrial Competitiveness (PCIC) found an important linkage between the cost of capital and productivity gains in industrialized nations.[5]

Recent studies indicate the relationship between tax policy and capital costs. A report by the Institute for Political Economy states that taxes in the United States raise capital costs by 45%, and adopting Japan's tax system would lower capital costs by 16%.[6]

We agree with the PCIC that a primary reason for the high cost of capital in the U.S. is that the tax code favors borrowing and debt instead of saving and investment. A recent study published by the National Bureau of Economic Research finds that the differences among industries' tax rates may have greater competitive consequences than the overall level of taxation. Interestingly, manufacturing industries — the sector most pressured by foreign competition — has an effective tax rate of 46%. This is one and one-half times higher than in wholesale and retail trade and more than four times the rate experienced by all other industries.[7]

The interest in the country today in reforming the tax code offers a rare opportunity to enact a simplified tax law that would substantially improve the U.S. trade position by lowering capital costs and improving savings and investment. In many ways, tax reform is the most important *trade* legislation that will be considered in the 99th Congress. However, if Congress doesn't focus on the effect that the tax code has on the cost of capital and U.S. competitiveness, it is quite possible that a new tax reform plan could further aggravate the present situation.

We believe that encouraging economic growth by lowering the cost of capital should be *the* primary objective of Congress in reforming the tax code. In particular, Congress should make a special effort to:

(1) lower marginal tax rates on both personal and corporate income;

(2) lower the capital gains rate (nine competitor nations in Western Europe and the Pacific Rim have no taxation of capital gains on stock investments);[8]

(3) improve tax incentives for research and development;
(4) improve depreciation schedules to encourage greater corporate investment.

The Steering Committee is not recommending a specific tax reform proposal. However, we will work to insure that changes made in these areas have the net effect of encouraging capital formation and, thereby, strengthening the U.S. trade position and industrial competitiveness.

While working toward a pro-capital formation tax reform law, it is essential to keep in mind important provisions in the present tax code that will expire before any tax reform takes effect. One such provision is the research and development tax credit, which expires on December 31, 1985.

The R&D credit was enacted in 1981 as part of the Economic Recovery Tax Act (ERTA). It enables businesses to take a 25% credit on *increases* in R&D expenditures over the average amount of the previous three years. In the four years since the credit was enacted, industrial R&D as a fraction of gross national product has increased 23% compared to the four years prior to 1981. A statistical analysis of corporate R&D as a fraction of GNP found that corporate R&D in the 1980s is much higher than would be expected based upon trends from the 1960s and 1970s.[9] A Joint Economic Committee study in August 1985 concluded that "empirical evidence on whether the tax credit has stimulated R&D spending tends to support the position of those who advocate continuing the credit."[10]

In 1984, the Senate passed legislation that would have made permanent the R&D credit and expanded it to cover start-up companies and computer software while refining its applicability to eliminate abuses. Unfortunately, the provision was dropped by a House-Senate conference committee.

In the 99th Congress, 246 Members of the House and 33 Senators have cosponsored similar legislation. We recommend that the credit be made permanent and refined as proposed last year by the Senate. (Both of our tax initiatives are consistent with recommendations of the PCIC.)

Proprietary Rights

Incentives for risk taking, which are needed to remain competitive, can be encouraged by insuring that rights to intellec-

tual property and trade secrets are adequately protected. In examining this issue, the Steering Committee has found that U.S. process patent law can be improved.

Process technology is especially important in biotechnology and certain other emerging industries. In biotechnology, inventions frequently involve processes or the manipulation of micro-organisms. Fledgling biotechnology firms such as the Liposome Company have stated they will never be able to recover their R&D expenses if foreign competitors continue to manufacture abroad using U.S. patented processes without proper authorization.[11] Current law permits products manufactured in this way to be imported into this country with impunity.

Process patent protection is important to other industries, too. According to the American Flint Glass Workers Union, inadequate protection of patented processes has cost their industry at least 50,000 jobs.[12] The Oil, Chemical and Atomic Workers International Union has expressed similar concerns.

Large U.S. manufacturers which hold important patents on processes for making amorphous metal alloys and optical fiber waveguides have been unable to obtain adequate relief in U.S. International Trade Commission cases against Japanese and West German imports. The potential U.S. markets for these two products alone are worth billions of dollars.

Our major trading partners, including Japan, West Germany, France, and the United Kingdom, have provisions in their laws similar to the legislation being proposed in the United States. We should provide at least as much protection as these countries provide.

Legislation permitting enforcement of a process patent when the goods manufactured using the process are delivered to the United States passed the House in the 98th Congress shortly before adjournment but did not pass the Senate. This legislation is needed to protect the legitimate rights of U.S. inventors, and we recommend its enactment. (This recommendation was also made by the PCIC.)

Provisions in the Freedom of Information Act (FOIA) have also been identified as allowing the abuse of proprietary rights. The FOIA was passed in 1974 to promote citizen scrutiny of government processes and provide citizens with legal rights to examine information that the government may have collected about them. Interestingly, public interest groups and journalists have constituted only a fraction of the number of

information requests filed in the FOIA. The greatest uses have been businesses (both foreign and domestic) that secure information about competitors. For example, 86% of the FOIA requests filed with the Food and Drug Administration in 1982 were of a commercial nature.[13] Under present law, the business that submitted the information is not even notified that confidential business information is about to be disclosed.

This information can be very useful to competitors that wish to take a "free ride" using the ideas and technologies developed and paid for by another company. It can also provide insight into a competitor's future business plans. In either case, the FOIA should be modified to eliminate this anti-competitive side effect. This can be done by requiring that companies which submitted information to a federal agency be notified that its information is being sought under the FOIA. In addition, such companies should be afforded the opportunity to object to a competitor's "right to know" if proprietary information is at stake. Of course, a review process would need to be established to adjudicate FOIA disputes. (This recommendation was also made by the PCIC.)

Regulations

The government must avoid hindering the efficiency of industry with unnecessary regulatory requirements. Evidence is accumulating that the process of industrial innovation is now impeded by a wide range of governmental regulations. The effects of these regulations — documented by the President's Commission on Industrial Competitiveness — include increased costs of R&D, declining rates of domestic research, lowered rates of new product introduction, and shifts of research activity to facilities abroad. In particular, the risks that technologies pose to human health and the environment need to be better assessed when writing regulations. We believe that by using the techniques of risk assessment and by comparing risks, federal agencies and the public will gain a better understanding of the hazards faced and thus be able to more logically regulate them.

The Steering Committee will conduct hearings next year to identify regulations that unnecessarily impair innovation and target the most important of these for immediate change, either by rulemaking or legislation.

INCENTIVES FOR RISK TAKING AND CAPITAL FORMATION

RECOMMENDATIONS

- Reform the tax code to reduce the cost of capital and improve those tax provisions that affect saving, investment, and productivity.
- Make permanent the research and development tax credit, and broaden its applicability to cover computer software and start-up companies.
- Permit enforcement of a domestic process patent against a product made by the patented process without proper authority in a foreign country.
- Amend the Freedom of Information Act by requiring that owners of proprietary information filed with the federal government be given the opportunity to challenge requests made under the FOIA for that information before it is released.

AN ADEQUATE SUPPLY OF SKILLED PEOPLE

The vision, skill, and motivation of the American people are our nation's greatest resource in meeting the competitive challenge. The United States historically has relied on a highly trained and educated work force as one of its most important advantages in international trade. Worker skills must be maintained and improved if the United States is to compete effectively in the international marketplace.

Worker Training

Demographic changes in the work force and the introduction of new technologies in the workplace make it imperative that workers continue to learn and gain new skills all their lives. For example, in 1984 the United States had 9,400 robots in place. By 1992, that number could exceed 133,000.[14] In five years there will be as many personal computers in the federal government as there are workers.[15] Eighty percent of America's labor force in the year 2000 is already working today, but many workers may be doing very different jobs by the end of this century. It is estimated that at any one time three percent of U.S. workers need retraining.[16]

Many Americans today face the anguishing possibility that their skills will become obsolete and that prolonged unemployment will destroy their accomplishments and dreams for the future. The United States has not fully come to grips with the question of how to help workers in declining industries develop new skills and find re-employment. According to a Business-Higher Education Forum report, the United States has seriously underinvested in the skill development of its workers. Only 25 percent of unemployment aid is directed to re-employment assistance, which is much lower than in many foreign countries.[17] Under current law, most U.S. workers lose their eligibility for unemployment compensation if they enter training programs. While analysts estimate that relatively few of the unemployed (5 to 10%) can be classified as "displaced", failure to assist them will seriously impede industry's — and their own — responsiveness to change.[18] Since every one percent increase in unemployment costs the government $40 billion in revenue, worker retraining has important fiscal consequences as well.[19]

Because of the new and changing demand that will be placed on the work force, the Steering Committee believes that government policies should insure that workers have adequate opportunities to maintain competitive skills. To provide such opportunities, we recommend the enactment of two initiatives in 1986. First, new savings incentives should be created to encourage preparation for the expenses of future retraining needs. Possibilities include the liberalization of Individual Retirement Accounts (IRAs) to permit workers to withdraw their savings without penalty or taxation to pay for employment retraining. A similar proposal is the creation of Individual Training Accounts (ITAs) to accomplish the same purpose. Second, displaced workers should be permitted to participate in a certified training program without disqualifying them from unemployment compensation to which they are otherwise entitled. This would help people without a job or marketable skills to adjust to new employment demands. (This recommendation was also made by the PCIC.)

Elementary and Secondary Education

In the 98th and 99th Congresses, interest in the nation's long-term technical training and labor needs has mushroomed.

Several bills have been introduced that would attempt to assist grade schools in technical training and in offering students courses to develop computer skills. We believe that educating young people in technical areas is critically important. However, we strongly feel that major new programs and incentives should come from state and local entities and not the Congress.

A growing number of local school district officials are becoming aware of the need for changing time-honored practices to meet the challenges of today's world. We applaud those who have moved toward "merit pay" and market forces to set rewards for teachers in areas of shortage. We believe that local school districts with well-paid and well-qualified teachers best understand the needs of young people in the years ahead without the advice and counsel of Washington. An example of this understanding was indicated by a survey of teachers in Chicago which found that computer science ranks behind only discipline and the "three R's" in educational importance.[20]

College Education

One way Congress can increase the quantity of skilled people in the United States is to insure that U.S. immigration policy does not prevent technically trained foreign nationals with critical skills from working here.

In the 98th Congress, both Houses passed immigration reform legislation that would have continued to permit foreign nationals who possess science and engineering skills to remain and work in the United States immediately after completing their education here provided that an American worker could not be found for the job.

Since nearly 40 percent of graduate engineering students in American universities are foreign nationals,[21] we continue to believe that U.S. companies should be able to hire these individuals if an American worker cannot be found. Any immigration reform legislation that is considered in the 99th Congress should extend the current exemption for scientists and engineers.

AN ADEQUATE SUPPLY OF SKILLED PEOPLE
RECOMMENDATIONS

- Create new incentives for worker retraining such as liberalizing Individual Retirement Account (IRA) rules, or forming similar Individual Training Account (ITAs), to allow individuals to set aside and later withdraw from their savings without penalty or taxation to pay for retraining.
- Permit participation of displaced workers in employment training programs without preventing them from receiving unemployment compensation.
- Continue to permit foreign nationals, educated in the U.S. in skill shortage areas such as science and engineering, to remain and work here after receiving their education if a position cannot be filled by a U.S. citizen.

EXPANDING MARKET OPPORTUNITIES

Even if the United States has a strong research base, incentives for risk-taking, and skilled people, innovation and the creation of new jobs will be stifled unless there are attractive business opportunities at home and abroad. That means America must have a strong domestic economy, and U.S. businesses must have access to foreign markets. While all of the initiatives described here would strengthen America's competitive position in the world marketplace, two initiatives described below would directly improve U.S. trade.

In assessing the ability of American firms to compete in foreign markets, the Steering Committee has found that new nontariff trade barriers have increased faster than the global decrease in tariffs and freight costs. In addition to import restrictions, many governments have also increasingly provided subsidies and other targeted assistance, such as special tax treatment or relaxed antitrust laws, to promote the development of selected industries. These nontariff barriers and government targeting activities are particularly significant because of the difficulty in detecting them and countering their imposition.

The Steering Committee believes that U.S. trade laws need to be more responsive to the new realities of global competition. Industries threatened by predatory import penetration

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have often been granted relief only after their injuries have become irreparable. Assistance has often been granted without a plan — or hope — for recovery or readjustment. For instance, the U.S. Trade Representative has up to one year to consider petitions aimed at achieving greater market access filed under Section 301 of the Trade Act of 1974. Anti-dumping claims filed with the International Trade Commission and the Commerce Department can take even longer before final action is taken by the U.S. government.

To address these problems, we recommend enactment of amendments to Section 201 and Section 301 of the Trade Act of 1974 that would make the federal government more responsive to unfair trade practices. Section 201 should be modified to require that the International Trade Commission report its anti-dumping recommendations directly to the U.S. Trade Representative and permit the USTR to take interim relief actions pending the outcome of a case filed under that section. Section 301 should be clarified to state the United States will consider the full range of competitor nation's trade practices when seeking to remove or redress the effects of certain unfair, unreasonable, and discriminatory foreign trade practices. In addition, the timetable for a decision by the federal government on whether unfair or discriminatory practices exist should be shortened.

Our antitrust statutes are another area in which the United States has yet to fully respond to changes in global markets. As noted earlier, legislation was enacted last year with Task Force support to foster R&D joint ventures. This year, a thorough review of the antitrust laws is under way in the Reagan Administration. We support this review process and will consider advocating specific antitrust changes in future editions of this Agenda.

In addition, monetary policy is being recognized in the United States and abroad as a key factor in determining interest rates and the value of the dollar against foreign currency. We believe that our present monetary policies should be reviewed and alternative approaches analyzed and debated. The Steering Committee plans to consider the many suggestions for improving U.S. monetary policy in formulating future editions of this Agenda.

Finally, Congress and the Administration should act with a sense of urgency to reduce significantly the enormous projected budget deficits that are a source of economic uncertainty

and which put upward pressure on interest rates and the value of the dollar. While recent trends in interest rates and the dollar make clear that other factors are important in addition to the deficit, we believe that enactment of the other recommendations described in this Agenda will have little significance unless the level of federal borrowing is substantially reduced. Reducing deficits should be achieved through spending cuts as well as the implementation of monetary and tax policies that permit maximum sustained economic growth. (This recommendation is consistent with the report of the PCIC.)

EXPANDING MARKET OPPORTUNITIES

RECOMMENDATIONS

- Amend the Trade Act of 1974 to require that the International Trade Commission (ITC) report recommendations under Section 201 directly to the U.S. Trade Representative (USTR), and permit the USTR to provide interim relief pending the outcome of a Section 201 case.
- Amend Section 301 to clarify that the United States will consider the full range of competitor nation's trade practices when seeking trade reciprocity, and shorten the timetable for a decision on determining whether unfair or discriminatory practices exist.
- Substantially reduce the federal budget deficit by cutting spending.

Conclusion

Technology and innovation are perhaps our nation's greatest assets in meeting the challenge of global competition. They must be strengthened. However, innovation cannot be *forced* by government -- it can only be *fostered*. Innovation is fostered by creating an economic environment that emphasizes freedom of scientific and industrial activities and offers incentives to the innovators, entrepreneurs, and investors who have the talent and resources to advance and apply technology. It is fostered by people who are well-trained to meet the present and future needs of the workplace. It is fostered by a healthy economic environment and by trade policies that provide expanding market opportunities for our technology and basic manufacturing industries. Meeting the challenge of global competition should a primary policy objective of the United States.

More information about the Republican Task Force on High Technology Initiatives may be obtained from:

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Footnotes

[1] Olmer, Lionel H. *U.S. Manufacturing at a Crossroads,* U.S. Department of Commerce, Washington, D.C., June 1985, p. 3

[2] Statement by Paul Volcker, Chairman, Federal Reserve Board, before the House Ways and Means Committee, U.S. Congress, Washington, D.C., April 10, 1984.

[3] *International Science and Technology Data Update,* National Science Foundation, Washington, D.C., January 1985, pp. 5-6.

[4] *Global Competition: The New Reality,* The Report of the President's Commission on Industrial Competitiveness, vol. 2, U.S. Government Printing Office, Washington, D.C., January 1985, p. 113.

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[6] *The Cost of Corporate Capital in the United States and Japan,* The Institute for Political Economy, Washington, D.C., 1985, p. ix.

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[9] *The Case for the R&D Tax Credit: A Submission to the Ways and Means Committee,* Subcommittee on Oversight, August 2-3, 1984, p. B-5.

[10] *The R&D Tax Credit: An Evaluation of Evidence on Its Effectiveness,* Joint Economic Committee, U.S. Congress, Washington, D.C., August 1985, p. 26.

[11] Statement by Dr. Marc J. Ostro, Vice Chairman, Liposome Company, before the Senate Subcommittee on Patents, Trademarks and Copyrights, October 23, 1985.

[12] Letter from Mr. George M. Parker, President, American Flint Glass Workers Union, to the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice, July 3, 1984.

[13] *The Food and Drug Letter,* Washington Business Information, Inc., Washington, D.C., July 26, 1985, p. 2.

[14] *Global Competition: The New Reality,* The Report of the President's Commission on Industrial Competitiveness, vol. 1, U.S. Government Printing Office, Washington, D.C., January 1985, p. 32.

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[16] *Toward a Competitiveness Agenda,* Highlights of the 1985 Winter Meeting of the Business-Higher Education Forum, Business-Higher Education Forum, Washington, D.C., p. 25.

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Chairman GIBBONS. I think you made an excellent dissertation on the problems of trade and the challenges of trade. And I do not have any questions for you.

Mr. Crane, do you have any questions?

Mr. CRANE. No, Mr. Chairman.

I want to congratulate our colleague, though, on the booklet that he was responsible for assembling and presenting to the committee; and particularly for its emphasis on the broad range of issues that are involved in redressing our trade imbalance.

Under Secretary of Commerce, Bruce Smart, indicated that if we had totally free trade in the world, it would not impact on our trade imbalance more than 10 to 20 percent; there are many other factors involved here. And one of these, that you hit upon, is this cost of capital.

The sad fact is there were three studies done, one at the instigation of the Chamber of Commerce; one by Chase; and one by Wharton on this past tax bill. Every one of them reached the same conclusion, that the cost of capital, if that tax bill becomes law, will escalate very dramatically, which is working directly at cross purposes with our efforts to achieve the goals that you embrace and I think the committee is seeking to endorse.

So we have got many, many aspects to the problem and I am glad that you dealt with it in a comprehensive way, although many of those components are relevant specifically to what we are considering here, with this trade package.

And I salute you, Ed.

Mr. ZSCHAU. I just want to say, Mr. Crane, that I am glad you pointed that out, that sometimes in our efforts to improve tax policy to achieve one objective—simplicity or fairness—we may be, without fully realizing it, impacting the ability of U.S. firms to be competitive in world markets and, as a result, we may inadvertently increase our trade deficit, reduce our ability to collect tax revenues, and increase unemployment.

I am hopeful, as we continue the discussion of tax policy and tax reform this year, that the criterion of international competitiveness will become a primary criterion in our analysis of what we do.

Mr. CRANE. Thank you for your testimony.

Mr. PEASE. Mr. Chairman, I would like to thank our colleague for testifying also. I would like to pose one question to him, since he is an entrepreneur, at least an ex-entrepreneur.

I think the thrust of this bill, quite properly, as you point out, ought to be to insist on fair trade, and make sure the playing field is level and that we are not subjected to unfair imports from overseas and that our manufacturers have a fair opportunity to sell their products in other markets.

I am somewhat concerned about the ability—or maybe a better term is the willingness of corporate America to compete overseas once we have a level playing field, or assuming that we can get a level playing field.

As you know, American corporations tend to look at short-term profit, not long-term competitiveness, unlike the Japanese. And a lot of the firms, in my area at least, seem to be very reluctant to get into the export business. They do not value putting people on

who have foreign language capability. They do not establish service organizations overseas.

The Chinese told us, last August when we were there, that they would prefer to buy from U.S. companies rather than rely so much on Japanese companies, but they could not get followup service for installation and repair or whatever.

And I guess, in terms of our long term ability to prosper as a nation, I wonder what the role is of U.S. corporate management and what faith we can have that they will get out and really compete once there is a level playing field, rather than sitting back and yelling for protectionism or trying to maximize their short term profits by dealing in the U.S. domestic market?

Mr. ZSCHAU. You are absolutely right, Mr. Pease. Government can provide an environment for U.S. enterprises to be competitive, but American business has to become much more export oriented. We have not been export oriented in the past, as you point out.

We have to recognize, not only in Government, but in the private sector, that there is a new fundamental at work today in business: If you are not competitive in foreign markets, you are not going to be competitive here at home. We used to be able to focus on the domestic market. If we sold a little abroad, that was gravy. We are now in a unified international market, and if we are not competitive abroad, by making a commitment to be competitive abroad, then it is going to be very difficult for us to compete here.

What can we do as Members of Congress? I think we can provide leadership when we talk to business groups, to emphasize the importance of the export market and the competitiveness on a worldwide basis, and try to change the thinking from a myopic domestic market oriented approach to an international approach.

I have been a professor at the graduate school of business at Stanford and Harvard. At those schools, we used to have a course called international business. Some people took that. It seems to me that in business education as well as management, we have to be thinking of all businesses being international businesses, because that is the way our trading partners are looking at it.

Mr. PEASE. I guess you and I agree entirely on the analysis. I guess what I am looking for is your judgment about whether corporate America will respond in the way you and I think they should.

Mr. ZSCHAU. I think there is a change going on. There is a responsiveness. It is going to take a long time to change. Let me give you one indicator.

When I was on the faculty at Stanford in the mid-1960's, we had a faculty meeting where we decided that we would no longer require MBA students to take manufacturing. That requirement was eliminated from the curriculum. That was not just the Stanford faculty being shortsighted, but it was a reflection that American business didn't recognize that making a product cheaper and better made a difference. Today, however, there is a real emphasis, not just on manufacturing, but manufacturing technology and research into new production techniques in order to be competitive.

I think that recognition which took a long time to develop is a reflection of the fact that yes, U.S. business is changing, but it has a long way to go in order to have the kind of policies and attitudes

that will make it a real competitor in the international business world.

Mr. PEASE. I appreciate that answer. I am a little concerned about a recent example I have seen. In the last few years, as we know, American auto manufacturers have lost significant market share to the Japanese, partially because of the exchange rate. Now the exchange rate is moving in our direction and we ought to be able to compete more effectively with the Japanese and our auto companies ought to be able to get back some of that lost market share.

In the face of Toyota and Nissan raising their prices by $1,000 a car, I see that General Motors has announced that it is going to increase the price of its cars. I would have thought that just in terms of competition, General Motors would be a lot better advised to hold the line on prices and try to really compete now that they have an advantage and regain some of the market share that they had lost.

You do not have to comment on that. Maybe Mr. Bieber who will testify later will be interested in doing so. Thank you very much for your testimony.

Chairman GIBBONS. Mr. Guarini.

Mr. GUARINI. Thank you, Mr. Chairman.

I want to thank our colleague for his outstanding contribution on focusing our attention on the need for better trading concerns of our country. Just to point out an observation I have recently made while I was in Germany, their exports are 35 percent of their gross national product. Our exports now have gotten to be 15 percent of our gross national product and growing. We had eight times our export since 1970. We see this is a very important surging part of our economy that has been often neglected.

I should imagine there are many things that we have to do that we haven't given attention to. Many of the economists think that macroeconomics is going to solve the whole problem and just take care of the monetary concerns and we don't have to do any other kind of trade reforms.

I assume you do not share that opinion, that there are many things that we can do to help ourselves beyond macroeconomics?

Mr. ZSCHAU. Yes. As a matter of fact, the thrust of my comments was designed to point out that the solution to the trade deficit doesn't fit on a bumper sticker, that it is a comprehensive set of actions. Trade law and the enforcement and negotiation of fair trade agreements comprise just one aspect. All of our policies, our macroeconomic policies, yes, but our tax policies, our antitrust laws, our patent laws, and the way in which they are enforced, all impact this environment for risk taking and competitiveness in international trade.

The thrust of my remarks was designed to point out that it is the mosaic of all of what we do in Government plus the activities of American business that will determine whether or not we are successful in world markets.

Mr. GUARINI. Our educational system needs rethinking, I am sure, where people can go into hard sciences, where they have in Germany, Japan, and even in Russia. We have sort of lagged behind in the hard sciences. Antitrust laws, perhaps, should be

looked into as part of the mosaic that you spoke of. Research and development. All of these things, we have been lagging behind in our thrust. In our tax reform bill, we just took a step backward

I think many of us have the view that the recent House tax reform bill has been antitrade more than protrade. I have spoken with many people, including the chairman of the committee, as to how expensing out would be so helpful in being able to take the deduction for the investment of capital in your business that particular year against your income. It is just unfortunate that we, even as the Ways and Means Committee, did put out a bill that was protrade.

Do you have any comment on that?

Mr. ZSCHAU. I agree with you heartily. We talk about trade legislation but tax legislation is the most important trade legislation that is being considered this year, for the very reason you point out. If the tax reform is passed and implemented and it discourages the kinds of activities that U.S. firms need to take in order to be more competitive, it will have a very important counterproductive effect on the trade deficit.

I am hopeful that the other body will make it all better. I am not very optimistic about that, however.

Mr. GUARINI. Thank you very much.

Chairman GIBBONS. Thank you, Mr. Zschau. We appreciate it very much.

Mr. ZSCHAU. Thank you, Mr. Chairman.

Chairman GIBBONS. Our next witness is the Honorable Bobbi Fiedler, a Member of Congress from California. Ms. Fiedler, would you come forward? You may proceed as you wish, ma'am.

STATEMENT OF HON. BOBBI FIEDLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. FIEDLER. Thank you very much, Mr. Chairman, for giving me the opportunity to come and spend a few moments with the committee today.

The task that you are working on is a terribly important one and one that I know every single Member of Congress is deeply concerned about.

In 1980, California exported $30 billion in products and imported $31.7 billion worth. By 1985, these figures had changed, to $34.7 billion in exports and $63.9 billion in imports. In agricultural products alone, California exports have dropped from $4.1 billion in 1981 to $2.9 billion in 1984.

In this hearing, we are attempting to craft the legislative solution to the problem of our growing trade deficit. Congressional policies designed to deal with this problem should integrate the dual goals of expanding export markets overseas while assuring that imported products compete in a fair manner with American producers in our domestic marketplace, essentially a policy of free and fair trade.

At this point, I would like to concentrate on the import side of our national trade deficit problem. In this regard, I would like to discuss my bill, H.R. 4337, the Truth in Packaging Act of 1986. While I have been concerned about unfair import practices for

some time, the impetus for this specific bill stems from an incredible story from my State of California. Pistachios grown in Iran were being marketed in the United States under the label "Pride of California." In the process, these Iranian pistachios captured 45 percent of the United States' pistachios market and cost American growers at least $20 million in lost earnings.

I was amazed that a country which had been directly implicated in a campaign of terrorism against the United States, including the bombing of the Marine Corp barracks in Beirut, that cost 241 lives, could take advantage of our domestic pistachios producers in such an unfair manner.

I undertook an investigation of the situation and learned that the pistachios case was only the tip of the iceberg. In fact, there are a number of imported commodities that are marked with American country of origin labels. Furthermore, I also uncovered abuses of our country of origin labeling requirement through transshipment of commodities through other foreign countries that do not actually produce that commodity.

For example, Ireland, the Netherlands, and the United Kingdom, all export dates into this country, yet they do not have the climate to produce dates. Obviously, these dates are being produced in another country.

This situation raised a number of questions regarding the intent of our laws concerning country of origin labeling and fairness to American producers of these products. Our country of origin laws are contained in section 304, marking of imported articles and containers of the Tariff Act of 1930. This section explicitly states that articles should be labeled "in such a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article."

Currently, there are serious abuses of this explicit law which need to be corrected. Second, there is a basic issue of fairness to American producers of these commodities.

In California alone, agricultural producers have spent over $58 million raised by producer assessments on advertising and promotion of their products. It is not fair to allow deceptively labeled foreign products to piggyback on these promotional efforts financed by domestic producers.

Furthermore, mislabeled imports may not fulfill the qualitative expectations of the purchaser, unfairly reflecting on the legitimate domestic products and leading to decreased demand for that product.

Therefore, I have introduced H.R. 4337, the Truth in Packaging Act of 1986. This bill is essentially a series of amendments to section 301 of the Tariff Act of 1930. This bill is designed to help the U.S. Customs Service to more efficiently administer the Tariff Act through a combination of plugging loopholes in the law for enhanced enforcement, adding great specificity to the law for easier interpretation and increasing fines and penalties to deter noncompliance with the laws.

H.R. 4337 is comprised of four amendments. The first amendment is a new requirement as to typeface and markings. This amendment adds some additional language to the rules regarding the size and typeface of the country of origin label. Currently the

law states that the country of origin label should be in a conspicuous place as legibly and diligently and permanently as the nature of the article will permit. The problem is this language forces the U.S. Customs Service to make a subjective qualitative judgment on each label in an ad hoc, case-by-case mode.

The solution is the addition of a qualitative standard to help Customs evaluate country of origin labels. My amendment would include the following language, "The country of origin label will be as large and as bold as the typeface of the largest type otherwise appearing on the article." The addition of my language to the law would enable Customs to merely measure the size of country of origin labels and the largest type otherwise appearing on the label, and make a simple determination of compliance.

The second amendment in my bill is entitled "Expedition of Complaints Relating to Marketing Requirements."

There are currently two problems with the way the Customs Service administers country of origin labeling complaints. First, not all complaints are printed in the Federal Register. My amendment states that Customs shall provide for prompt notification of all interested parties after the filing of the complaint under this subsection.

This language has the functional result of requiring Customs to publicize all country of origin label complaints in the Federal Register.

Second, once Customs receives a country of origin label complaint, there is no timetable in the law with which Customs has to comply in responding to the complaint. A review of the country of origin complaints handled by Customs since 1982 shows that it has taken Customs an extremely long time to render a decision on these complaints.

In 1982 it took Customs 16 months to decide a country of origin label complaint regarding imported semiconductors, and 17 months to render a decision on imported audiocassette shells. Filed in 1984, a complaint regarding the country of origin label on imported unfinished sweaters is still pending after 26 months.

In 1984, a complaint on imported pistachios took 7 months, a complaint on imported pipe and pipe fittings took 13 months, and a complaint on imported textiles is still pending after 8 months.

My amendment would create a specific timetable for Customs to respond to country of origin label complaints, which would entail a 60-day period after a complaint has been received for public comment, followed by a 120-day period for Customs to render an actual decision.

The third section of my bill is the new criminal penalty. This amendment would extend criminal penalties from the original importer to any subsequent distributor or repacker that repacks or distributes imported articles and omits or mislabels the country of origin label.

Currently there exists a substantial loophole in the law regarding the jurisdiction of Customs over repackers and distributors, as well as the criminal and civil penalties to be levied on repackers by the Customs Service for failure to comply with county of origin marking requirements.

On many occasions, imported articles will be sold and resold a number of times between the original importer and the ultimate retail purchaser. This process is called the chain of commerce. My amendment would clarify the jurisdiction of the U.S. Customs Service over repackers and distributors in the area of country of origin labels and would extend the criminal penalties for noncompliance with the country of origin requirements to any subsequent repacker in the chain of commerce between the original importer and the ultimate retail purchaser.

The final section of the bill is entitled Modification in Fine for Offense. This amendment increases the criminal fine for violating the country of origin labeling requirements from $5,000 to $100,000, and also cites fines in title XVIII if so authorized. The increase in fines, combined with a 1-year jail term, will help the undermanned Customs Service to deter noncompliance with the country of origin labels.

There are additional details that I could present to you this morning, but I think that that gives you a rather comprehensive overview of the basic concept of the bill, and I hope that the committee will deem these various areas very worthy of not only investigation but changes in terms of the current law.

Thank you very much for your patience.

[The prepared statement follows:]

STATEMENT OF HON. BOBBI FIEDLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Chairman Gibbons and other members of the Subcommittee on Trade of the Committee on Ways and Means, I am pleased to be able to testify at this hearing on the critical problem of our national trade deficit.

Today, the United States is facing an increasing trade deficit that poses a grave threat to the future of our country's economy and by extension, our national security. In 1985, our national trade deficit was $148.4 billion with $213.1 billion worth of exports and $361.6 billion worth of imports. These figures constitute the continuation of an alarming trend towards high trade deficits. In 1980 our trade deficit was $32 billion, yet by 1984 this figure had climbed to $123 billion, and the 1985 figures show a 6% increase in imports and a 2% drop in exports over 1984.

Until recently, our agricultural trade was a bright spot in an otherwise bleak national trade figure. Yet recent figures show a downward trend in exports combined with an upward movement in agricultural imports. In 1981, we exported $43.7 billion in agricultural products and imported $17.2 billion. By 1985, we were exporting only $31.2 billion and importing $19.8 billion worth of agricultural products, a drop in our positive balance of trade from $25.5 billion in 1981 to $11.4 billion in 1985. Furthermore, the Department of Agriculture is predicting that in 1986, our positive balance in trade will drop another $2 billion.

In my state of California, the trend in trade figures is similarly bad. In 1980, California exported $30 billion in products and imported $31.7 billion. By 1985, these figures had changed to $34.7 billion in exports and $63.9 billion in imports. In agricultural products, California exports have dropped from $4.1 billion in 1981 to $2.9 billion in 1984.

In this hearing, we are attempting to craft a legislative solution to the problem of our growing trade deficits. Congressional policies designed to deal with this problem should integrate the dual goals of expanding export markets overseas while insuring that imported products complete in a fair manner with American producers in our domestic marketplace. Essentially, a policy of "free and fair trade."

At this point I would like to concentrate on the imports side of our national trade deficit problem. In this regard I would like to discuss my bill, H.R. 4337, the "Truth in Packaging Act of 1986." While I have been concerned about unfair import practices for some time, the impetus for this specific bill stems from an incredible story from my state of California.

Pistachios grown in Iran were being marketed in the United States under the label, "Pride of California", and in the process had captured 45% of the United States pistachio market and cost American growers at least $20 million in lost earnings. I was amazed that a country which has been directly implicated in a campaign of terrorism against our country, including the bombing of the Marine Corps barracks in Beirut that cost 241 lives, could take advantage of our domestic pistachio producers in such an unfair manner.

I undertook an investigation of this situation and learned that the pistachio case was only the tip of the iceberg. In fact, there are a number of imported commodities that are marketed with American country of origin labels. Furthermore, I also uncovered abuses of our country of origin labeling requirements through transshipment of commodities through other foreign countries that do not actually produce that commodity. For example, Ireland, the Netherlands, and the United Kingdom, all export dates into this country yet they do not have the climate to produce dates. Obviously, these dates are being produced in another country.

This situation raised a number of questions regarding the intent of our laws concerning country of origin labeling, and of fairness to American producers of these products. Our country of origin laws are contained in Section 304, Marking of imported articles and containers, of the Tariff Act of 1930. This section explicitly states that articles should be labeled, "in such a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article," Currently, there are serious abuses of this explicit law which need to be corrected.

Secondly, there is a basic issue of fiarness to American producers of these commodities. In California alone, agricultural producers have spent over $58 million, raised by producer assessments, on advertising and promotion of their products. It is not fair to allow deceptively labeled foreign products to piggyback on these promotional efforts

financed by domestic producers. Furthermore, mislabeled imports may not fulfill the qualitative expectations of the purchaser, unfairly reflecting on the legitimate domestic products and leading to decreased demand of that product.

Therefore, I have introduced H.R. 4337, the "Truth in Packaging Act of 1986." This bill is essentially a series of amendments to Section 301 of the Tariff Act of 1930. This bill is designed to help the United States Customs Service to more efficiently administer the Tariff Act through a combination of:

- o plugging loopholes in the law for enhanced enforcement;
- o adding great specificity to the law for easier interpretation;
- o and increasing fines and penalties to deter noncompliance with the law.

H.R. 4337 is comprised of four amendments. The first amendment is a "New Requirement as to Typeface and Mark." This amendment adds some additional language to the rules regarding the size, and typeface of the country of origin label. Currently, the law states that the country of origin label shall be in, "a conspicuous place as legibly, indelibly and permanently as the nature of the article will permit.." The problem is that this language forces the U.S. Customs Service to make a subjective, qualitative judgment on each label in an ad hoc, case-by-case mode. The solution is the addition of a quantitative standard to help Customs evaluate country of origin labels. My amendment would include the following language, "the country of origin label will be as large and as bold as the typeface of the largest type otherwise appearing on the article." The addition of my language to the law would enable Customs to merely measure the size of the country of origin label, and the largest type otherwise appearing on the label, and make a simple determination of compliance.

The second amendment in my bill is entitled "Expedition of Complaints Relating to Marking Requirement." This language details certain

procedures that Customs is to follow in responding to country of origin complaints. There are currently two problems with the way the Customs Service administers country of origin labeling complaints. First, not all complaints are printed in the Federal Register. My amendment states that Customs shall, "provide for prompt notification of all interested parties after the filing of a complaint under this subsection." This language has the functional result of requiring Customs to publicize all country of origin label complaints in the Federal Register.

Second, once Customs receives a country of origin label complaint, there is no timetable in the law with which Customs has to comply in responding to that complaint. A review of country of origin complaints handled by Customs since 1982 shows that it has taken Customs an extremely long time to render a decision on these complaints. In 1982 it took Customs 16 months to decide a country of origin label complaints regarding imported semiconductors, and 17 months to render a decision on imported audio cassette shells. Filed in 1984, a complaint regarding the country of origin label on imported unfinished sweaters is still pending after 26 months! In 1985, a complaint on imported Iranian pistachios took 7 months, a complaint on imported pipe and pipe fittings took 13 months, and a complaint on imported textiles is still pending after 8 months. My amendment would create a specific timetable for Customs to respond to country of origin label complaints which would entail a 60 day period after a complaint has been received for public comment followed by a 120 day period for Customs to render a decision.

The third section of my bill is the "New Criminal Penalty." This amendment would extend criminal penalties from the original importer to any subsequent distributor or repacker that repacks or distributes imported articles and omits or mislabels the country of origin label. Currently, there exists a substantial loophole in the law regarding the jurisdiction of Customs over repackers and distributors as well as the criminal and civil penalties to be levied on repackers by the Customs Service for failure to comply with country of origin marking requirements. On many occasions imported articles will be sold and resold a number of times between the original importer and the ultimate retail purchaser. This process is called the "chair of commerce." My amendment would clarify the jursidiction of the U.S. Customs Services over repackers and distributors in the area of country

of origin labels and would extend the criminal penalties for noncompliance with the country of origin requirements to any subsequent repacker in the chain of commerce between the original importer and the ultimate retail purchaser.

The final section of my bill is entitled, "Modification in Fine for Offense." This amendment increases the criminal fine for violating the country of origin labeling requirements from $5,000 to $100,000, and also cites fines in Title 18 if so authorized. The increase in fines, combined with a one year jail term, will help the undermanned Customs Service to deter noncompliance with the country of origin labeling.

While the emphasis in my testimony has been on imported agricultural commodities, my bill will cover any imported commodity or article that is marketed in this country with an omitted or deceptive country of origin label. I believe that it is a basic right of American consumers to know the country of origin of the article they are purchasing. I also strongly believe that American producers and manufacturers have a basic right to fair competition with imported products in our domestic marketplace. My bill will help fulfill both these laudable goals. Thank you for this opportunity to testify before this committee.

Mr. PEASE [presiding]. Thank you, Representative Fiedler.

Are there any questions?

Mr. GUARINI. What committee is this bill before, Bobbi?

Ms. FIEDLER. Ways and Means Committee is the first committee to hear it.

Mr. GUARINI. Energy and Commerce also?

Ms. FIEDLER. Just Ways and Means.

Mr. GUARINI. It wasn't referred sequentially to Energy and Commerce? We have the sole jurisdiction over it?

Ms. FIEDLER. It might be, but it is my understanding that at this point it is Ways and Means.

I do have a number of various interests that have supported and endorsed the bill. The Apricot Producers of California, who have faced similar types of problems, the Peach Canning Association, and the California Date Administrative Committee has endorsed it, and there are others, I know, who are in the process of looking very closely at this bill because they feel that it will help to resolve some of their problems.

I am convinced as a consumer that if those people who go to the marketplace to buy products, knew that the pistachios they were buying were grown in Iran, they would reject them on a wholesale basis. Yet those kinds of labeling requirements do not exist today, and you will pick up dates and pistachios and find them listed as fancy imported. That is not adequate labeling information for the American consumer.

Mr. GUARINI. Is it our people here in the United States who are either wrongfully labeling or not labeling properly the items, or are they being labeled wrongfully overseas?

Ms. FIEDLER. I think primarily from overseas, but also, I do not believe that the existing law is clear enough. I don't think they are violating the law in some cases. I think that our laws simply are not tight enough. In listening to other testimony, often the focus tends to be just our responsibility in terms of our export responsibilities, but it goes far beyond that. We are Members of the U.S. Congress. We have the ability to scrutinize and look at what our laws actually require and to make certain that we protect our domestic industry by not simply permitting misleading and deceptive labeling, for instance, to take place.

I think it is absolutely imperative that we search very closely throughout our laws, as I have done in this particular area, to make certain that as this trade bill is developed and proposed, that we end up with policies in our country which recognize that we have to make certain that our domestic industries are on a fair footing not only internationally but here in this country, as well.

Mr. GUARINI. Is there anything in your bill that says that if an overseas supplier wrongfully labels and consistently is found to do that on a number of occasions, that they no longer can import to the United States, or export?

Ms. FIEDLER. It doesn't set that standard, but it does put a very high penalty, and the reason that we put that penalty as high as we did, from $5,000 to $100,000, is that when you take a look at the economic balance of somebody taking a risk of mislabeling versus having to pay a penalty which is nominal by comparison to the potential profits which they might——

Mr. GUARINI. That game won't be worth the candle.

Ms. FIEDLER. We want it tough enough that it is going to be too costly for them to do it. Plus when you realize that products are being shipped from Iran or from Nicaragua or from other areas of the world to England or Ireland, and simply because they are changing ships in midstream, permitted under our existing law to come in labeled from those countries that they were transshipped to, then we have not adequately addressed those interests, as well.

Mr. GUARINI. Thank you for your splendid contribution.

Ms. FIEDLER. May I just make one comment? Before, you talked about the issue related to the tax bill, and one of the things that I noted in that bill as it relates to international trade is that we were going to permit the international tax credit to stay in place but take away the domestic tax credit. That simply does not make sense. Why should we give an advantage to people who are producing in other parts of the world and take away the same asset to our domestic producers.

Mr. GUARINI. Thank you.

Mr. PEASE. Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman.

I want to congratulate Bobbi on the introduction of this legislation. Your fellow Californian on the committee, Bill Thomas, was the one that brought that pistachio case to my attention, and for the life of me, I cannot understand why we would import anything from Iran, much less permit this clear violation of existing statutes.

One of the things that is involved is definitions, though, and I can see a theoretical case in the substantial transformation of pistachios if they came into the country and they hadn't been dried at all. I never ate a raw pistachio nut, but if it becomes a different product——

Ms. FIEDLER. Let me argue a case against that viewpoint. When they bring dates in from another part of the world and they simply take the pit out of it, that is considered substantial transformation; yet it is not. It is not a different product simply because they remove a pit or a stem from it. The same thing is true if they——

Mr. CRANE. If you will yield, Bobbi——

Ms. FIEDLER [continuing]. Hull it. If they hull a pistachio, that is not substantial transformation.

Mr. CRANE. Well, let me ask you this question because I'm not familiar with pistachios.

Ms. FIEDLER. This bill doesn't happen to deal with that, but that is my personal view.

Mr. CRANE. In their undried form, though, are pistachios edible? I mean I know peanuts are. In fact, raw peanuts——

Ms. FIEDLER. I can't answer that question.

Mr. CRANE. I was just wondering whether maybe the criteria employed in that substantial transformation, maybe that should be tightened up, too.

Ms. FIEDLER. That is an area that you would want to look at, but I can't imagine anybody growing a pistachio for any purpose other than eating it.

Mr. CRANE. Might feed it to the hogs. Who knows?

Ms. FIEDLER. It is not as though it could be used for something else.

Mr. CRANE. I thank you for your testimony, and clearly you have focused on an area of deficiency in existing law, or at least in enforcement, and I congratulate you on that testimony, and thank you for appearing.

Ms. FIEDLER. My pleasure.

Mr. PEASE. Thank you very much, Ms. Fiedler.

We have a vote on across in the Capitol. The committee will stand in recess for about 5 minutes. When we return, we will hear from a panel consisting of Owen Bieber, president of the UAW, and William Bywater, president of the International Union of Electronic, Electrical Technical, Salaried & Machine Workers.

Chairman GIBBONS. We regret to announce that we probably will not have any Republicans here at this time; they're all scattered all over the Washington scene right now. Mr. Crane is testifying before another committee and Mr. Frenzel is testifying downtown and everybody is real busy. And I must say that the weather outside is bracing and busy.

Our next panel is composed of Mr. Owen Beiber, the president of the International Union of United Automobile, Aerospace & Agricultural Implement Workers of America; and Mr. Bywater who is with International Union of Electronic, Electrical, Technical. Salaried & Machine Workers of the AFL–CIO. Glad to have you here, and you may proceed as you wish.

STATEMENT OF OWEN BIEBER, PRESIDENT, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA

Mr. BIEBER. Thank you, Mr. Chairman and members of the committee. My name is Owen Bieber and I am president of United Automobile Workers of America, and I am happy to be joined by my good friend and colleague, Bill Bywater, president of the IUE.

On behalf of the UAW I wish to thank you for providing this opportunity to share our views on trade policy with you and the members of the subcommittee.

For several years, we in the UAW have tried to convince Members of Congress and policymakers of the administration of the need to develop a long-term trade policy to serve the interests of the American people. The absence of such an active policy has allowed other countries to unfairly exploit our markets. The draft bill produced by this subcommittee's staff has addressed some of the past deficiencies of U.S. trade law and policy. In several areas, though, we believe it does not go far enough.

I would like to focus my remarks on a couple of the issues the draft bill does not cover. We believe that it is absolutely essential for the U.S. Government to take effective action to control the trade deficit. The already dangerous 1984 deficit of $123 billion grew to nearly $150 billion in 1985 and indications are that it is headed even higher this year. Our trade balance in manufactured goods shifted from a surplus of $12.5 billion in 1980 to a deficit of $112.8 billion in 1985; a swing of $125 billion in just 5 years.

The persistent record-shattering trade deficits are causing serious erosion of U.S. industrial capacity. The huge flood of imports has held down employment. Many of our best manufacturing jobs have been lost, eroding middle-income jobs in many communities and moving America toward a two-tier society; one in which there are many low-paying jobs and only a relative handful of high-paying jobs.

We believe that adoption of specific trade deficit reducing measures are needed to reverse the tide of imports and their adverse impact on America's economy, manufacturing industries and their workers, families and communities. We do not believe this problem will disappear on its own or through the use of current trade policies or those changes proposed by the staff's draft bill.

The U.S. trade deficit in automotive products, which was well above $40 billion in 1985, is headed much higher. Additional imports from Japan, Korea, Mexico, Brazil, and Europe will boost total car imports above 4 million in a few short years from an already high 2.8 million last year.

The plans of General Motors, Ford, and Chrysler to import cars and purchase others made by joint ventures or foreign companies will play a significant part in this increase in imports.

The UAW is alarmed by the dangers for the U.S. economy presented by the auto industry's import problem. We also have large numbers of members in other industries who have been hurt by ineffective U.S. trade policies. Significant unfair restrictions on U.S. exports have hurt our exports of aircraft and auto parts, especially in Latin America. At the same time, growing imports from subsidiaries and licensees of U.S. companies are adding to imports from foreign companies in the construction and agricultural machinery industries.

Exports of construction machinery dropped from over 40 percent of the industry's shipments in 1982 to only 20 percent in 1984. The spread of coproduction agreements in the aerospace industry doubled the foreign content of U.S. built aircraft from 1978 to 1983, and the trend is continuing. Foreign governments have threatened to close their markets to U.S. exports and granted special concessions to U.S. firms to achieve their goals of building up these industries. The U.S. Government must act to promote our exports in these and other important industries.

While the draft bill addresses some of the serious problems confronting U.S. industries seeking relief under the U.S. law covering unfair trade practices, we believe that the danger posed by the excessive trade deficit of the United States requires stronger and more certain action. We believe measures such as those in H.R. 3035, the proposed Trade Emergency and Export Promotion Act, are needed to eliminate the unfair trade practices of our trading partners and to stem the further escalation of the deficit.

Only countries which maintain trade barriers in excessive nonpetroleum trade surpluses with the United States would be affected by such measures. The United States must set a trade surplus cap for each of these countries and achieve a steady reduction in that surplus through the elimination of unfair practices, greater access for U.S. exports and other measures as needed.

If, after sufficient time is allowed, the goals are not met, the United States would impose sanctions on the trade of such countries. The surcharge proposed in H.R. 3035 is one possible sanction. There are others equally effective which could be imposed.

The UAW is interested in all the areas of trade law reform addressed by the draft bill. We agree with many of the changes you have proposed, although we do not believe they are sufficient to deal effectively with the Nation's trade problems.

In addressing the injury test in section 201, the draft bill does not go far enough. It clarifies that recessionary conditions in the U.S. economy cannot be considered a more important cause of injury than imports. Had such a provision been in place in 1980, we could have won our case concerning automobiles at the ITC. However, this clarification leaves intact the test of substantial cause which exceeds the GATT standard of injury. We believe that the law should only require that imports be a cause of injury for an industry to qualify for relief.

We are concerned that the problem of the abuse of internationally recognized worker rights was not addressed in the staff's draft revision of U.S. trade law. The suppression of basic labor rights, those spelled out in title V of the 1984 Trade Act, should be treated under U.S. law and in international agreements as an unfair trade practice subject to retaliation when goods made under such conditions are imported into the United States. This would require adding the abuse of labor rights to the list of unreasonable acts, policies, or practices included in section 301 of the trade law.

Investigations initiated in response to a petition or by Government action should be swift and affirmative. Findings should result in mandatory action by the U.S. Trade Representative. An appropriate retaliation against countries which fail to take steps to meet internationally recognized worker rights would be the denial of the most-favored-nation treatment.

Mr. Chairman, we are pleased that your subcommittee is considering legislation to update our Nation's trade laws. They are in serious need of change. We hope that in the areas we have addressed; the importance of trade deficit reduction measures and additional revisions in sections 201 and 301 of the trade law, you will amend the draft bill to include our suggestions.

Mr. Chairman, on behalf of the UAW, I thank you for the opportunity to address your committee.

[The prepared statement follows:]

SUMMARY
STATEMENT OF
OWEN BIEBER, PRESIDENT
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
BEFORE THE
SUBCOMMITTEE ON TRADE
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

APRIL 10, 1986

For several years, we in the UAW have tried to convince Members of Congress and policy-makers in the Administration of the need to develop a long-term trade policy to serve the interests of the American people. The discussion draft trade bill produced by this Subcommittee's staff has addressed some of the past deficiencies of U.S. trade law and policy. In many areas, though, it does not go far enough.

It is absolutely essential for the U.S. government to take effective action to control the trade deficit. The already dangerous 1984 deficit of $123 billion grew to nearly $150 billion in 1985 and indications are that it is headed even higher this year. Many of our best manufacturing jobs have been lost, eroding middle income jobs in many communities and moving America toward a two-tier society, one in which there are many low-paid jobs and only a relative handful of high-paying jobs.

The U.S. trade deficit in automotive products, which was well above $40 billion in 1985, is headed much higher. Significant unfair restrictions on U.S. exports have hurt our exports of aircraft and auto parts, especially in Latin America. At the same time, growing imports from subsidiaries and licensees of U.S. companies are adding to imports from foreign companies in the construction and agricultural machinery industries.

The danger posed by the excessive U.S. trade deficit requires stronger and more certain action. Measures such as those in H.R. 3035, the proposed Trade Emergency and Export Promotion Act, are needed to eliminate the unfair trade practices of our trading partners and stem the further escalation of the deficit. Only countries which maintain trade barriers and excessive non-petroleum trade surpluses with the U.S. would be affected by such measures. The U.S. must set a trade surplus cap for each of these countries and achieve a steady reduction in that surplus through the elimination of unfair practices, greater access for U.S. exports and other measures as needed. The surcharge proposed in H.R. 3035 is one possible sanction — there are others, equally effective, which could be imposed.

In addressing the injury test in section 201, the draft bill does not go far enough. We believe that the law should only require that imports be a "cause" of injury for an industry to qualify for relief.

The suppression of basic labor rights, those spelled out in Title V of the 1984 trade act, should be treated under U.S. law as an unfair trade practice under section 301 of the trade law, subject to retaliation when goods made under such conditions are imported into the U.S. Affirmative findings should result in mandatory action by USTR. An appropriate retaliation against countries which fail to take steps to meet internationally recognized worker rights would be the denial of most-favored-nation treatment.

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STATEMENT OF
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INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE
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APRIL 10, 1986

Mr. Chairman, my name is Owen Bieber. I am President of the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). On behalf of the UAW, I wish to thank you for providing this opportunity to share our views on trade policy with you and the members of your Subcommittee.

For several years, we in the UAW have tried to convince Members of Congress and policy-makers in the Administration of the need to develop a long-term trade policy to serve the interests of the American people. The absence of such an active policy has allowed other countries to unfairly exploit our markets. The discussion draft trade bill produced by this Subcommittee's staff has addressed some of the past deficiencies of U.S. trade law and policy. In many areas, though, it does not go far enough.

I would like to focus my remarks on a couple of the issues the draft bill has ignored. We believe that it is absolutely essential for the U.S. government to take effective action to control the trade deficit. The already dangerous 1984 deficit of $123 billion grew to nearly $150 billion in 1985 and indications are that it is headed even higher this year. Our trade balance in manufactured goods shifted from a surplus of $12.5 billion in 1980 to a deficit of $112.8 billion in 1985 — a swing of $125 billion in just five years. All of this has been caused by increased imports; our exports have not grown at all over this period. The influx of imports and stagnation of exports has led to serious trade problems for an ever growing number of manufacturing industries, even those counted among our most technologically advanced: semiconductors, telecommunications, computer equipment, chemicals and others. In fact, the U.S. trade surplus in high technology manufactured goods fell from $26.6 billion in 1980 to only $6.2 billion in 1984. This surplus fell perilously close to zero in 1985. While Japan accounts for the major share of the worsening balance in high technology trade, sizable contributions have been made by Brazil, Taiwan, South Korea, Hong Kong and Singapore.

The persistent, record-shattering trade deficits are causing serious erosion of U.S. industrial capacity. The huge flood of imports has held employment in a number of industries below the pre-1980 level. Many of our best manufacturing jobs have been lost, eroding the middle income workforce in many communities and moving America

toward a two-tier society, characterized by many low-paid jobs and only a relative handful of high-paying jobs. A recent study by the Office of Technology Assessment found that 11.5 million workers lost their jobs because of plant closings and other job relocations between 1979 and 1984. Only 60 percent of the workers found new jobs. Of these fortunate ones, a full 30 percent took pay cuts of more than 20 percent. Many of the dislocations were caused by the rapid deterioration of the U.S. trade balance. This study supports the findings of others, including one conducted by our own union. The affected communities, thousands of them, will be hard-pressed to restore the loss of income suffered by their residents. The standard of living and quality of life in these areas will continue to erode.

In addition to the hardships imposed on American workers by the staggering trade deficit, the foreign debt which is piling up will become a drain on U.S. resources. In future years, our living standard and ability to meet domestic needs will take second place to the debts owed to others. The U.S. has been transformed from the largest creditor nation in the world to one of the largest debtors in a few short years. By the end of 1986, our nation's foreign debt will most likely exceed that of any other country, including Mexico and Brazil. The flow of funds abroad to pay interest and principal on this debt at a time when the revitalization of U.S. industrial strength is needed will make effective domestic economic policy-making much more difficult.

We believe that adoption of specific trade deficit-reducing measures are needed to reverse the tide of imports and their adverse impact on America's economy and our manufacturing industries, their workers, families and communities. We do not believe this problem will disappear on its own or through the use of current trade policies or those changes proposed by the staff's draft bill. Companies in Europe, Canada and Japan are formidable competitors in many areas of production, including those relying upon advanced technology. The developed countries have been joined by newly industrialized countries (NICs), such as Taiwan, South Korea, Singapore, Hong Kong, Mexico and Brazil, among others. All of these nations, individually or through associations like the European Economic Community, have used government policies to help develop new industries, protect such industries while they are young, encourage their exports, limit imports of competing goods and, generally, assist in pursuing economic development strategies. Many unfair trade practices have contributed to the growing competition faced by U.S. producers.

The lack of priority given to trade problems, in years past as well as today, encourages affected U.S. companies to accomodate to unfair practices rather than fight them. As a result, many American-based firms join the ranks of the "foreign producers" through wholly-owned subsidiaries or joint ventures with companies abroad. The products of such investments add to U.S. imports and replace U.S. exports to other countries.

While the companies add to their profits through these foreign operations, the U.S. economy and affected industries and communities suffer from the lost employment opportunities and reduced investment.

The situation of the U.S. auto industry today reflects the long-term nature of our trade problems. The weakness of the Voluntary Restraint Agreement (VRA) negotiated with Japan in 1981, and the failure to enact domestic auto content or similar legislation, has led to increased foreign-sourcing of fully-assembled vehicles and parts by U.S. producers. The plans of GM, Ford and Chrysler to import cars, purchase others made by joint ventures or foreign companies in the U.S. with a relatively large proportion of imported parts and increase the use of imported parts in their U.S.-made vehicles will lead to reduced U.S. production and far fewer jobs for American workers even if total U.S. sales grow. The investments in U.S. assembly operations by Japanese producers, while welcome, have failed to measure up to our expectations in terms of parts purchases and employment. These vehicles are adding considerably to our trade deficit. Additional imports from Japan, Korea, Mexico, Brazil and Europe will boost total car imports above 4 million in a few short years from an already high 2.8 million last year. Before the end of this decade, the loss of employment in auto and auto-related industries could reach 400,000 unless some action is taken. The U.S. trade deficit in automotive products, which was well above $40 billion in 1985, is headed much higher due to these developments.

The UAW is alarmed by the dangers for the U.S. economy presented by the auto industry's import problem. We also have large numbers of members in other industries who have been hurt by ineffective U.S. trade policies. Not only increasing imports, but foreign restraints on our exports have cost jobs in the aerospace, agricultural implement and construction machinery industries.

Significant unfair restrictions on U.S. exports have hurt our exports of aircraft and auto parts, especially in Latin America. At the same time, growing imports from subsidiaries and licensees of U.S. companies are adding to imports from foreign companies in the construction and agricultural machinery industries. Exports of construction machinery dropped from over 40 percent of industry shipments in 1982 to 20 percent in 1984. The spread of co-production agreements in the aerospace industry doubled the foreign content of U.S.-built aircraft from 1978 to 1983, and the trend is continuing. Foreign governments have threatened to close their markets to U.S. exports and granted

special concessions to U.S. firms to achieve their goals of building up these industries. The U.S. government must act to defend our exports in these and other industries.

While the draft bill addresses some of the serious problems confronting U.S. industries in seeking relief under the U.S. law covering unfair trade practices, we believe that the danger posed by the excessive trade deficit of the U.S. requires stronger and more certain action. We believe measures such as those in H.R. 3035, the proposed Trade Emergency and Export Promotion Act, are needed to eliminate the unfair trade practices of our trading partners and stem the further escalation of the deficit.

Only countries which maintain trade barriers and excessive non-petroleum trade surpluses with the U.S. would be affected by such measures. The U.S. must set a trade surplus cap for each of these countries and achieve a steady reduction in that surplus through the elimination of unfair practices, greater access for U.S. exports and other measures as needed. Each country subject to a surplus cap would have broad flexibility in meeting the goal through policies of its own choosing. If, after sufficent time is allowed, the goals are not met, the U.S. would impose sanctions on the trade of such countries. The surcharge proposed in H.R. 3035 is one possible sanction — there are others, equally effective, which could be imposed.

The U.S. cannot afford the unending negotiations to remove unfair barriers to our exports, one by one, while the trade deficit undermines our industrial base. In the past, we have negotiated with countries for years on end with only minimal success and little or no impact on trade.

Some may argue that the depreciation of the dollar since September will reverse the growth of the trade deficit and return it to an acceptable level. While the return of the dollar to a lower value will produce improvement in our trade balance, the evidence indicates that a large deficit will remain. The decisions by U.S. firms to build or buy their products abroad cannot be easily rescinded. The foreign producers who have gained a foothold or strengthened their presence in the large and profitable U.S. market in recent years will not be anxious to relinquish their positions. Our market, because of U.S. government inaction, has, indeed, become more internationalized and only strong action will convince U.S. firms to make the needed investment in domestic production facilities which will preserve our industrial base and increase our international competitiveness.

Thus far, the realignment of exchange rates has not been sufficient to alter expectations of unacceptably high U.S. trade deficits. The yen-dollar relationship has moved considerably, but no knowledgeable analyst expects this to have much impact on our trade deficit with Japan. In fact, the 1986 deficit is expected to climb well above

1985's incredible $50 billion. There are even moves by the Japanese government to offset the effect of the appreciation of the yen on Japanese companies and to push the value of the yen back down.

. The dollar's value, compared with European currencies, has retraced only a portion of its ascent since 1980, so only a modest effect can be expected in trade with Europe. There are several countries which tie their currency to the dollar. Among these are some with large trade surpluses with the U.S. — Taiwan and South Korea. The dollar continues to appreciate against the Canadian dollar, the Mexican peso and the Brazilian cruzeiro. Taken together, the currency changes of the past six months provide no assurance that large U.S. trade deficits will disappear in the near future. Indeed, there is no assurance that the dollar's recent decline in value will continue; the direction of change could even reverse as other countries intervene in the currency markets to defend the wealth generated by their large trade surpluses with the U.S.

The UAW is interested in all the areas of trade law reform addressed by the draft bill. We agree with many of the changes proposed and the directions taken. The transfer of decision-making authority under Sections 201 and 301 would be welcome as would the move toward mandatory Administration action. It is nigh time that industries hurt by imports were assured of receiving relief. We believe this certainty of relief should be extended to all industries which petition successfully or for which self-initated cases result in favorable determinations.

There is one area of trade law which is of great interest to us where the draft bill does not go far enough. In addressing the injury test in Section 201, the draft clarifies that recessionary conditions in the U.S. economy cannot be considered a more important cause of injury than imports. Had such a provision been in place in 1980, we could have won our case concerning automobiles at the ITC. However, this "clarification" leaves intact the test of "substantial cause" which exceeds the GATT standard of injury. We believe that the law should only require that imports be a "cause" of injury for an industry to qualify for relief.

We are concerned that the problem of the abuse of internationally recognized worker rights was not addresssed in the staff's draft revision of U.S. trade law. The suppression of basic labor rights, those spelled out in Title V of the 1984 trade act, should be treated under U.S. law and in international agreements as an unfair trade practice subject to retaliation when goods made under such conditions are imported into the U.S. This would require adding the abuse of labor rights to the list of unreasonable

acts, policies or practices included in Section 301 of the trade law. Investigations initiated in response to a petition or by government action should be swift, and affirmative findings should result in mandatory action by USTR. An appropriate retaliation against countries which fail to take steps to meet internationally recognized worker rights would be the denial of most-favored-nation treatment. Annual reviews would determine whether countries subject to retaliation had come into compliance with the law and whether other countries fell into violation of the law through their failure to continue toward recognition of basic labor rights.

In many developing countries, repression of workers and their organizations is a central part of export promotion programs and efforts to attract investment by multinational producers. Workers in these countries are prevented from obtaining a fair share of the wealth generated by international trade because of direct and indirect government policies to prevent the exercise of basic labor rights. Lifting the constraints on worker rights would encourage the growth of domestic markets and, thereby, reduce the presssure to export and possibly open up opportunities for U.S exporters. We believe the Subcommittee should amend the definition of unfair trade practices to include the abuse of labor rights in its revision of Section 301.

We are also concerned about the new round of multilateral trade negotiations which the Administration has proposed. The staff draft includes issues for the Administration to pursue in those talks. We would appreciate the opportunity to submit our views on the new round to the Subcommittee in a later statement.

Mr. Chairman, we are pleased that your Subcommittee is considering legislation to update our nation's trade laws. While these laws alone cannot provide answers to the inadequate trade policy pursued by the Administration, they are in serious need of change. We hope that in the areas we have addressed — the importance of trade deficit reduction measures and additional revisions in Sections 201 and 301 of the trade law — you will amend the draft bill to include our suggestions.

Chairman GIBBONS. Thank you, sir. I want to assure you that your suggestions will receive very serious consideration by the chairman and by the committee. I hope that the day will soon arrive when this committee and organized labor and industry in the United States can go hand in hand together. I regret that in the past, we have had adversarial roles in some of these things. But I'm willing to work with you and see what can be done.

Let's see, our next witness, of course, is Mr. Bywater.

STATEMENT OF WILLIAM H. BYWATER, PRESIDENT, INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, TECHNICAL, SALARIED & MACHINE WORKERS, AFL-CIO

Mr. BYWATER. Mr. Chairman, I am Bill Bywater, president of the International Union of Electronic Workers, IUE. The 175,000 members of IUE work primarily in the electronic and electrical industries. I appreciate the opportunity to appear before the subcommittee to share our views on the need for trade law reform.

For more than 20 years now, IUE has been involved in a fight for a rational trade policy. Over the years we have seen a drastic decline in our membership, largely a reflection of job loss due to foreign imports. We've lost entire industries, radio being a prime example.

The dangerous decline in U.S. trade performance is reflected in trade statistics. For example, the trade deficit in electrical machinery increased from $900 million in 1983 to nearly $6 billion by the end of 1985. In 1981, the country ran an $8 million surplus in electric lamps; last year we sustained a $175 million deficit. Over this period, IUE suffered numerous plant closings and layoffs as imported lamps flooded in from Japan, Taiwan, Korea, and even Hungary.

Our trade problems cannot be solved by macroeconomic policies alone. A substantial portion of the decline in our trading position can be attributed to the unfair practices of our foreign competitors and the failure of our own Government to effectively deal with these problems.

The IUE commends the House Democratic leadership for making trade reform a legislative priority this year. And we commend your efforts, Mr. Chairman, and those of your subcommittee for developing a comprehensive trade reform proposal and moving ahead quickly on this urgent matter. We are pleased the subcommittee's proposal incorporates many of the important issues addressed in the Trade Law Modernization Act, H.R. 1950. And I want to take this opportunity to commend Congressman Guarini and Congressman Duncan for their foresight in introducing that bill last April.

A few weeks ago your subcommittee heard testimony from LICIT, the Labor-Industry Coalition for International Trade, of which IUE is a member. The IUE endorses LICIT's recommendations to the subcommittee. I don't intend to repeat their testimony, but I would like to highlight a few of their proposals in light of our own experience.

We commend your proposal to make foreign export targeting actionable under section 301. However, we support the comprehensive approach outlined in H.R. 1950, which would require mandato-

ry action to fully offset the effects of targeting whenever the ITC determines that material injury or threat of injury has occurred. The situation involving large electrical generating and transmission equipment presents an excellent example of our serious problems with foreign targeting.

GE and Westinghouse are the two largest manufacturers of this type of equipment. Both corporations employ a large portion of production workers represented by IUE. Within both chains we have suffered massive and permanent job loss and locations producing this equipment—Schenectady, NY; East Pittsburgh, Philadelphia and Sharon, PA; and Pittsfield, MA.

U.S. sales of heavy electrical equipment in our domestic markets and in the markets of developing countries have been severely affected by the targeting practices of European countries and Japan. These countries have promoted domestic production of this type of equipment with policies that include discriminatory procurement in their domestic markets—which completely excludes imports from the United States—and two-tiered pricing practices coupled with subsidized export credits in overseas markets. These practices have helped Japan and Europe to maintain the employment of highly skilled engineers and production workers who are necessary for competing in this high-technology field, while thousands of U.S. workers have lost or will soon lose their jobs. The same thing is happening in the television industry, the machine tool industry, and many others.

In our written testimony, Mr. Chairman, we have also addressed the following issues: Proposed changes to section 201, national resource and capital subsidies provided by foreign governments; and proposals to strengthen the authority of the USTR. In the interest of time, I will not be able to cover all these subjects today. But, there is one point I'd like to emphasize with respect to the changes proposed for section 201, and that is that the IUE feels very strongly that trade adjustment assistance should be provided to workers as a matter of right in all cases in which there has been serious injury due to imports.

Now, Mr. Chairman, I'd like to address the need for the immediate reduction of the trade deficit. The magnitude and complexity of the international trade crisis requires the United States to explore and pursue a variety of strategies to reduce the deficit.

The electronic and electrical industries are being fatally damaged, as each month passes, by the flood of imports. These goods are coming in from the same countries in which our overall trade deficits are the largest; Japan, Korea, Taiwan, and Hong Kong, to name a few. The danger posed by the growing trade deficit requires strong and certain actions such as outlined in H.R. 3035, the Trade Emergency and Export Promotion Act, which has been proposed by Chairman Rostenkowski, Congressman Gephardt, and Senator Bentsen. The details of this proposal have been discussed by other witnesses. The main point I want to stress is that immediate action to reduce the trade deficit is critical to IUE members and the industries in which they are employed.

The IUE also strongly urges the passage of H.R. 2349, which would close a loophole in the tariff schedule that has enabled foreign manufacturers to circumvent the 15 percent duty on colored

television tubes by importing them as part of unassembled kits or sets, through third countries such as Mexico, under a lower rate.

The IUE is a member of the Committee to Preserve American Colored Television and fully endorses the testimony given by COMPACT before this subcommittee in February.

This bill amounts to only a technical change in existing law but its passage is critical to the survival of the domestic color TV industry and the remaining jobs of U.S. workers. This will ensure that the intent of Congress will not continue to be circumvented. There's no justification for any proposal to offset this change by tariff reductions on other television items.

Another extremely important issue that must be addresed is the exploitation of workers abroad and the effects of such exploitation on trade. It's an unfortunate reality that major competitive advantages in world trade are often derived from the exploitation of foreign workers. Multinational firms search the world over for the cheapest labor force, move production to wherever they find it, and then export goods to the United States and other markets.

But wage rates are not the only factor considered in the location of production facilities. Countries where electronic production plants are now located are most often chosen because they deny basic internationally-recognized labor rights, such as the right to form and join unions, the right to bargain collectively, the right to a safe and healthy work environment and prohibitions against forced and child labor. It is the denial of these rights which keeps labor costs low—so low that U.S. workers, no matter how efficient, cannot compete.

Low wages offered by our foreign competitors constitute an unfair trade subsidy. The cost of the subsidy is paid for by an oppressed work force rather than the Government, but it's an unfair subsidy just the same; no different than foreign government subsidization of raw materials, natural resources or capital.

Thus, we strongly urge the subcommittee to incorporate into its trade reform bill provisions such as those contained in H.R. 4412, the Fair Trade and Economic Justice Act, recently introduced by Congressman Pease. This bill would treat the exploitation of workers as an unacceptable means for a foreign country or industry to gain competitive advantage in international trade. It would make the denial of internationally-recognized worker rights an unfair trade practice. The IUE considers it essential that Congress develop a trade policy that will promote economic justice for workers at home and abroad.

One final proposal which I'd like to mention is H.R. 3733, the Foreign Agents Compulsory Ethics in Trade Act. This bill would prohibit Cabinet members, high level White House staff and other Presidential appointees from representing foreign clients for at least 10 years after leaving public service.

Mr. Chairman, I am outraged by the growing number of former high-ranking U.S. officials who now represent America's trade competitors. There are serious ethical questions raised concerning the propriety of former U.S. officials enriching themselves by representing foreign governments and businesses at a time when the United States is fighting for its economic life in the trade arena.

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The lives of American workers and their families are at stake. It is ironic that these firms are often more successful——

Chairman GIBBONS. Excuse me, Mr. Bywater, we've got another very important vote over there. Could we interrupt you——

Mr. BYWATER. Well, I only have one more paragraph. That's all. OK?

Chairman GIBBONS. All right, sir.

Mr. BYWATER. It's ironic that these firms are often more successful in preserving business for foreign competitors than U.S. firms and workers are at convincing their own Government to save our American industries and jobs. This was clearly demonstrated recently by the failure of U.S. workers and manufacturers to convince Congress to override President Reagan's veto of the textile trade bill. American workers can only hope they will not receive a similar response this year, as Congress once again tries to pass meaningful trade reform legislation.

Thank you, Mr. Chairman.

[The prepared statement follows:]

SUMMARY OF STATEMENT
OF WILLIAM H. BYWATER, PRESIDENT
INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, TECHNICAL,
SALARIED & MACHINE WORKERS, AFL-CIO

BEFORE THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

** The decline in the performance of the United States in international trade is reflected in the trade statistics of the last five years. Trade deficits have expanded in industries of concern to the IUE, including electrical machinery, power generating machinery, electric lamps, and electronic products.

** Our trading problems cannot be solved by macroeconomic policies alone. A substantial portion of the decline in our position in international trade can be attributed to the unfair practices of foreign competitors and the failure of our own government to effectively deal with these problems.

** The IUE strongly supports the efforts of the House Democratic leadership and the Trade Subcommittee to develop and pass comprehensive trade reform legislation this year.

** The IUE is a member of the Labor Industry Coalition for International Trade (LICIT) and supports changes in the Trade Subcommittee's draft bill consistent with recommendations made by LICIT in testimony presented on March 20, 1986.

** The IUE is particularly concerned about the problem of predatory export targeting practices of foreign trade competitors, which have caused serious injury to industries in which IUE members work.

** The granting of import relief to American workers under Section 201 of the Trade Act, should not be contingent on ITC approval of industry adjustment plans, as proposed in the Subcommittee's draft bill. Trade Adjustment Assistance should be provided to workers as a matter of "right" in all cases in which the ITC determines there has been serious injury due to import penetration.

** The injury standard in Section 201 cases should be changed from "substantial cause" to "cause," so that it is not more stringent than the GATT standard.

** The health and strength of the U.S. economy require that trade decisions be depoliticized and that international trade be given a higher position on the national agenda. This goal would be promoted by vesting greater authority in the USTR, as proposed in H.R. 1950.

** Capital subsidies provided by foreign governments to their industries should be treated in the same manner as other discriminatory natural resource subsidies.

** Because of the magnitude and complexity of the international trade crisis, the U.S. must take immediate action to reduce the trade deficit. The IUE supports measures outlined in H.R. 3035, The Trade Emergency and Export Promotion Act.

** The IUE strongly urges the passage of H.R. 2349, which would close a loophole in the Tariff Schedules which has enabled foreign manufacturers to circumvent the 15 percent duty on color television picture tubes by importing them as part of unassembled sets or kits. The IUE is a member of the Committee to Preserve American Color Television (COMPACT), and fully endorses testimony presented by COMPACT to the Subcommittee on February 13, 1986.

** The IUE strongly urges the Subcommittee to incorporate provisions into its trade reform bill pertaining to internationally recognized labor rights, such as those contained in H.R. 4412, The Fair Trade and Economic Justice Act of 1986. H.R. 4412 would amend the Trade Act of 1974 to include the denial of such rights as an unfair trade practice.

** The IUE also supports H.R. 3733, the Foreign Agents Compulsory Ethics in Trade Act, which would prohibit Cabinet members, high level White House staff, and other presidential appointees from representing foreign clients for at least ten years after leaving public service.

STATEMENT OF WILLIAM H. BYWATER

Mr. Chairman, I am William Bywater, President of the International Union of Electronic, Electrical, Technical, Salaried & Machine Workers (IUE), AFL-CIO. IUE members work for many companies across a wide spectrum of industries including the electrical-electronics, transportation equipment, fabricated metal and optical goods industries. On behalf of the 175,000 workers which we represent in those industries, I appreciate this opportunity to appear before this Subcommittee to share our views on trade policy, the effects of U.S. trade policy on American workers, and the need for trade law reform.

For more than twenty years now, the IUE has been involved in the fight for a rational trade policy. At one time, our union represented over 400,000 workers, but over the years we have seen a drastic decline in our membership. This decline is not only a reflection of jobs lost due to the ever-increasing flood of foreign imports into our country, but is also due to the loss of entire industries--the radio industry being a prime example. Many industries are rapidly following this path to extinction--television, electrical appliance, lighting, and others are mere fractions of their former selves. Even the more modern industries are being threatened by foreign produced goods.

The dangerous decline in the performance of the United States in international trade is reflected in the trade statistics of the last five years. When Reagan took office in 1981, the United States enjoyed a trade surplus in manufactured goods of $13 billion. Today, as a result of the Administration's do-nothing policy, the manufacturing trade deficit has reached an unprecedented $113 billion. As this Subcommittee is well aware, the total U.S. merchandise trade deficit reached a record $148.5 billion, up from the previous year's record deficit of $123.3 billion.

In machinery and transport equipment (industrial machinery, computers, communication equipment, autos, and aerospace), a subgroup of the manufacturing sector,in which IUE members are concentrated, the nation ended the year with a $47.4 billion deficit, up from 1984's deficit of $33.1 billion. Imports into the U.S. in this category increased by more than 15 percent in just one year.

An examination of more specific trade data does not improve the picture. In electrical machinery, the trade deficit increased from $892 million in 1983, to more than $5.8 billion by the end of 1985. Industrial output in this sector has fallen 3.8 percent over the last 12 months. In the power generating

industry, which the U.S. completely dominated just a few years ago, our surplus has been reduced from $3.3 billion in 1983, to $1.3 billion last year.

In 1981, the country ran an $8.0 million surplus in electric lamps. Just four years later, we sustained a $175.0 million deficit. Over this period of time we have suffered numerous plant closings and layoffs in the lighting industry. Imported lamps have been flooding in from Japan, Taiwan, South Korea, West Germany, Canada, Mexico, and even Hungary.

The situation is no different in "high-tech" industries such as electronic products. The American Electronics Association, which testified before this Subcommittee last month, provided the staggering numbers: U.S. trade in electronics products fell from a surplus of $7.4 billion in 1980 to a deficit of $8.6 billion in 1985. Imported electronics products increased their share of the U.S. market by 42 percent between 1980 and 1984.

The nation's employment situation has continued to deteriorate as a direct result of the collapse of our world trading position. The U.S. Commerce Department recently published a study entitled "Trade Ripples Across the U.S. Industries", which reported that during 1984, 2.3 million jobs in the manufacturing sector were wiped out because of imports. The report detailed the loss of jobs in the various sectors of the economy including the electrical and electronic equipment industry in which 356,000 jobs wiped out in 1984. The situation for American manufacturing workers did not improve in 1985, and there is is no reason to expect improvement for 1986.

The new year started out with an all-time monthly high trade deficit of $16.5 billion. Even though the deficit declined to $12.5 billion in February, we are still outpacing the 1985 performance by more than 34 percent. The trade deficit in manufactured goods during the first two months of this year, was more than 30 percent higher than it was during the corresponding period last year.

A major cause of our current trade imbalance can be directly attributed to the misguided and unfair economic policies of the Reagan Administration over the last five years. The massive federal budget deficits, brought about by the huge 1981 tax cuts for corporations and the wealthy and the sky-rocketing military budget, have led to a vastly overvalued dollar. This, in turn, has made it more difficult for domestic producers to sell their products abroad, and easier for foreign producers to sell their products here.

We welcome the recent actions on the part of the Administration to bring down the value of the dollar, but recognize that it is still valued well above its mid-1980 level. We also

recognize that our trade problems cannot be solved solely by macroeconomic policies. Our experience demonstrates that such action alone will not be sufficient to solve the problems in our industry. Many of the countries with which we are running large trade deficits in electrical goods, such as Taiwan and South Korea, tie their currencies to the dollar, thus making devaluation efforts meaningless.

A substantial portion of the decline in our position in international trade can be attributed to the unfair practices of our foreign competitors and the failure of our own government to effectively deal with these problems. Given the radical changes in the world economy, a major overhaul of our trade laws is now required.

The Need For Trade Law Reform

The IUE commends the Democratic leadership of the House for making trade reform a legislative priority this year. We also commend your efforts, Mr. Chairman, and those of your Subcommittee, in developing a comprehensive trade reform proposal and moving ahead quickly toward the passage of meaningful and much needed legislation.

The IUE is encouraged by the scope and substance of the Subcommittee's draft bill. We were very pleased to see that it incorporates many of the issues addressed in the Trade Law Modernization Act (H.R. 1950) which we, as a member of the Labor Industry Coalition for International Trade (LICIT), fully endorse. I want to take this opportunity to commend Congressman Guarini and Congressman Duncan, who are also members of the Ways and Means Committee, for their foresight in introducing the Trade Law Modernization Act last April.

A few weeks ago, your Subcommittee heard testimony from Howard Samuel and Kenneth Millian representing LICIT. As I stated, the IUE endorses their recommmendations. I need not reiterate the elements of their testimony. However, I do want to emphasize some of the recommendations they made, in light of our Union's experience in the industries in which our members work--or once worked.

The Issue of Export Targeting

We join LICIT in commending your proposal to make foreign export targeting actionable under Section 301 of the Trade Act. IUE members and the industries in which they work have suffered serious injury from the export targeting practices of some of our foreign competitors. Various industrial sectors, ranging from

consumer electronics to large electrical generating and transmission equipment, have been victimized by predatory foreign targeting practices.

The situation involving large electrical generating and transmission equipment presents an excellent example of our problems with foreign targeting. This type of large equipment, as you may know, is used to convert heat energy into electric energy, and to transmit the electric energy to the location at which it is to be used. General Electric and Westinghouse are the two largest manufacturers of this type of equipment and both corporations employ a large proportion of production workers represented by the IUE. Within both chains, we have suffered massive and permanent job loss at locations producing this equipment--Schenectady, NY; East Pittsburgh, PA; Pittsfield, MA; Philadelphia, PA; and Sharon, PA.

In recent years, U.S. sales of heavy electrical equipment in our domestic markets, and in the markets of developing countries, have been adversely affected by the targeting practices of European countries and Japan. The governments of these countries have promoted domestic production of this type of equipment with policies that include: discriminatory procurement in their domestic markets, which completely excludes imports from the U.S. or elsewhere; and two-tier pricing practices, coupled with subsidized export credits in overseas markets.

These practices have helped Japan and Europe to maintain the employment of highly skilled engineers and production workers who are necessary for competing in these high-technology products. Meanwhile, thousands of U.S. workers have lost, or will soon lose, their jobs.

There are many other examples from other industries. Targeting plans have been formulated and applied by the Japanese Ministry of International Trade and Industry (MITI), working closely with their domestic producers in the machine tool and robotics industries. These practices have resulted in a dramatic decline in the U.S. machine tool industry.

A few years ago, we changed the name of our Union to remove the reference to radio workers because we no longer represented <u>any</u> U.S. radio workers. Why? Because there were no longer any home radios made in this country. Over the years, imported radios from Japan and other Asian countries flooded our market and drove <u>all</u> of our domestic producers either out of business or offshore. With them went the jobs of thousands of American workers. The same thing is happening in the television industry and the machine tool industry. I hope that the day does not come when we will have to eliminate the reference to electrical

workers in our name. If something is not done to address and remedy the devastating injury caused by the export targeting practices of our foreign competitors, I fear that that day will arrive, all too soon.

Proposed Changes in Section 201

We share LICIT's serious concern about the Subcommittee's proposals regarding the optional adjustment plan track under Section 201. Specifically, we do not believe that the ITC should be vested with the statutory authority to approve or disapprove industry-labor adjustment plans for improving international competitiveness. Nor should the granting of import relief be made contingent upon such approval.

In its testimony, LICIT pointed out that there are bound to be situations in which companies or industries will not be able to agree on the need for, or the means of adjustment. In the electrical and electronic manufacturing industries, for example, the products are so diverse, and so many of the companies are multinational importers as well as exporters, that it is difficult to imagine consensus on an industry-wide plan for adjustment, or even a company-wide agreement.

It would be patently unjust for the law to put workers in a position in which they could be denied relief for job loss due to imports simply because their employer or industry cannot, or does not desire to reach agreement on a strategy for improving international competitiveness. IUE strongly supports LICIT's recommendation that Trade Adjustment Assistance be granted to workers as a matter of "right" in all cases where there is an ITC determination of serious injury due to import penetration.

The IUE also believes that the injury standard in Section 201 cases should be changed from "substantial cause" to "cause", in order to make the requirements of U.S. law no more stringent than the standard prescribed under the GATT. Why should it be more difficult under U.S. law for our own industries and workers to prove that they have been injured by imports? It should not be, and we therefore urge the Subcommittee to adopt LICIT's recommendations concerning this important issue.

Strengthening the Authority of the U.S. Trade Representative

The IUE supports LICIT's recommendation to strengthen the authority of the USTR, in a variety of areas. It is not news to the members of this Subcommittee, that military and security considerations frequently provide the unstated, but very real underpinnings of our trade relations with many of our foreign

competitors. All too often, international trade considerations are subordinated to foreign policy considerations, to the detriment of U.S. industries and workers.

As outlined in a recent news article, many countries are becoming very brazen in their efforts to leverage trade considerations in the context of negotiations with the U.S. concerning security agreements. Secretary of State Shultz recently went to Turkey to discuss the renewal of an agreement to maintain American military bases in that country. In preparation for the Secretary of State's visit, the Secretary of Commerce, Mr. Baldridge and the USTR, Mr Yeutter went to Turkey and negotiated an increase in Turkey's quota for textile exports to the U.S. from $120 million in 1985, to $190 million for this year. This represented a doubling of Turkey's share of the U.S. market from 1 percent to 2 percent, at a time when the U.S. textile industry is in real trouble.

The Administration had reportedly been left with the impression that this new textile arrangement would satisfy the Turkish government. However, when Mr. Shultz met with Turkish Prime Minister Ozal in March, he was bluntly told that if the U.S. wanted the bases, the textile quota would have to be increased to $400 million, and overall imports to $3 billion.

I submit, Mr. Chairman, that the U.S. economy cannot afford capitulate to this type of blackmail--whether it be overt as in the case of Turkey, or unstated but clearly understood, as in the case of Japan or South Korea. I think that if you ask U.S. workers whether they are willing to continue trade their jobs for U.S. military bases in Turkey, or Portugal, or South Korea, the answer will be a resounding "NO".

The IUE believes that the health and strength of the U.S. economy requires that international trade be depoliticized and given a higher position on our national agenda. By vesting greater authority in the USTR, as proposed in the Trade Law Modernization Act, the United States would send a message to our foreign trading partners that international trade <u>is</u> an important issue to our country. This would benefit U.S. industries and workers--and our national economy.

<u>Natural Resource Subsidies</u>

In the area of "natural resource subsidies", we strongly endorse the LICIT approach. That proposal would treat capital subsidies provided by foreign governments to finance, build and operate production facilities in the same manner as other discriminatory "natural resource" subsidies. The capital financing provided by governments to producers should be priced at its real market value.

Immediate Action on Deficit Reduction

Because of the magnitude and complexity of the international trade crisis, the U.S. must explore and pursue a variety of strategies in order to reverse the situation. The Subcommittee's draft bill and the Trade Law Modernization Act propose reforms which are meaningful, but "long-term" in both nature and effect. The IUE concurs with the views of the AFL-CIO and the UAW, that the existing crisis necessitates the adoption of specific and immediate measures to reduce our astronomical trade deficit.

Several remaining electronic-electrical industries are being irreparably damaged--as each month passes--by the flood of imported goods. These goods are coming in from the same countries in which our overall trade deficits are the largest--Japan, Korea, Taiwan, and Hong Kong to name a few.

The danger posed by the growing deficit requires strong and certain actions such as those outlined in H.R. 3035, The Trade Emergency and Export Promotion Act which was proposed last year by Chairman Rostenkowski, Congressman Gephardt and Senator Bentson. The details of this proposal have been discussed by Lane Kirkland earlier this week, and by Owen Bieber today. The main point I want to stress here is that immediate action to reduce the trade deficit is critical to IUE members and the industries in which they are employed.

Support of H.R. 2349--To Amend Television Tariff Schedules

The IUE also strongly urges the passage of H.R. 2349, which would close a loophole in the Tariff Schedules which has enabled foreign manufacturers to circumvent the 15 percent duty on color television tubes ("CPTs") by importing them as part of unassembled sets or kits. The IUE is a member of the Committee to Preserve American Color Television (COMPACT), and fully endorses the testimony given by them before this Subcommittee on February 13, 1986.

H.R. 2349 would add a new Interpretive Headnote to the Tariff Schedules which would require that color television picture tubes, imported in combination with other articles, be classified under the separate provision for television picture tubes. While this amounts to only a technical change in existing law, the passage of H.R. 2349 such is critical to the survival of the domestic color television industry, and the employment of thousands of U.S. workers.

This legislation would put an end to the circumvention of the higher duty on the picture tube by eliminating the loophole that enables "back-door" entries to be classified as incomplete television receivers, dutiable at a rate of only 5 percent. This

practice has been used by Japanese producers to import substantial quantities of tubes manufactured in Japan and shipped to assembly facilities in Mexico. Each television picture tube in subsequently transshipped to the U.S. in its original packaging, together with a chassis and control panel, under the lower tariff rate.

This legislation does not create new tariff categories, nor does it alter the level of duty on existing categories. Accordingly, it is consistent with our international obligations and agreements. The legislation merely ensures that the intent of Congress will not continue to be circumvented, and that the U.S. picture tube industry will be permitted to compete with foreign manufacturers on terms which are consistent with the intent of our Tariff Schedules.

Because of the nature of this tariff modification, we see no justification for proposals to offset this change by reductions in tariffs on other television items. Specifically, we oppose duty rate reductions on selected color TV picture tube sizes, as was recently proposed by the U.S. Trade Representative, Mr. Yeutter.

There are a few additional substantive areas which are not addressed in any of the measures discussed above, which we believe should be part of any major trade reform legislation.

Internationally Recognized Labor Rights for Foreign Workers

One extremely important issue which must be addressed is the exploitation of workers abroad and the effects of such exploitation on trade. It is often argued by conservative economists and proponents of "free-trade", that trade among nations occurs because respective countries enjoy different "comparative advantages" in producing goods. These advantages result from a prime geographical location, an abundance of natural resources, an agreeable climate, etc. In this myth, the result of such trade is that all countries are better off when each produces and trades those goods which it can produce and trade most efficiently. This was never an accurate description of the world trading system, and is certainly not one applicable to today's global economy.

Instead, trade today often takes place on the basis of the exploitation of workers. Multinational firms search the world over for the cheapest labor force, move production to wherever they find it, and then export the goods to the United States. The IUE, AFL-CIO, and the UAW have previously submitted testimony to the USTR as part of the GSP review process, documenting

the harsh working conditions in countries such as Taiwan, South Korea, the Philippines, and others.

There are strong forces at work in the international economy acting to drive down the standard of living of American workers to the world's lowest common denominator. But domestic manufacturers will never be able to compete fairly with these less developed, low-wage countries.

Wage rates are not the only factor considered in the location of worldwide production facilities. Workers in many countries where electrical and electronic production facilities are now located, are often denied basic internationally recognized labor rights, such as: the right to form and join unions, the right to bargain collectively, the right to a safe and healthy work environment, and prohibitions against forced labor and child labor.

It is the denial of these rights which keeps wages low--so low that U.S. workers, no matter how efficient, cannot compete. Often, foreign governments pursue repressive policies in to keep labor costs low as a means of attracting foreign investment. Many countries have strong military or police forces which actively prevent workers from exercising these basic rights.

The IUE believes that such exploitation retards the development of self-reliant, local economies in developing countries. When a country's entire economy is geared for export, and workers earn only subsistance wages, they cannot afford to purchase the very products they make for the world market. These restrictions on the growth of internal markets also limit U.S. export potential. Repressive working conditions also invite social and economic instability.

The low wages offered by these foreign countries constitute an unfair trade subsidy. The cost of the subsidy is paid for by a oppressed workforce, rather than the government, but it is an unfair subsidy just the same--no different and no more fair than foreign government subsidization of raw materials, natural resources, or capital.

Thus, we strongly urge the Subcommittee to incorporate provisions into it's trade reform bill such as those contained in H.R. 4412, The Fair Trade and Economic Justice Act of 1986, which was recently introduced by Congressman Pease and others. Mr. Pease's bill would treat the exploitation of workers as an unacceptable means for a foreign country or industry to gain competitive advantage in international trade. H.R. 4412 would expressly amend Section 301 of the 1974 Trade Act to include the denial of internationally recognized workers rights (as already defined in Title V of that Act) as an unfair trade practice.

The IUE considers it essential that the Congress develop a trade policy that will promote economic justice for workers at home and abroad. By pressuring our foreign trade competitors to extend basic labor rights to workers in their countries, we will increase the security of American workers and make the U.S. economy more competitive.

Support for Compulsory Ethics in Trade

Another proposal which we support is H.R. 3733, the Foreign Agents Compulsory Ethics in Trade Act, which was introduced by Representatives Kaptur and Wolpe. Their bill would prohibit Cabinet members, high level White House staff, and other presidential appointees from representing foreign clients for at least ten years after leaving public service.

Mr. Chairman, I find the growing number of former high-ranking U.S. officials who now represent America's international trading competitors to be alarming. For example, I recently read that Taiwan's Board of Foreign Trade retains a lobbying firm headed by Mr. Ablondi, a former member of the ITC. We ran a trade deficit of $13.1 billion with Taiwan last year.

South Korea hired Michael Deaver, as soon as he left the White House, to represent their interests with our government. The Koreans also gained one of Deaver's new associates, Doral Cooper, a former Assistant USTR. The U.S. ran a $4.8 billion trade deficit with South Korea last year. South Korea is one of the worst violators of internationally recognized labor rights, as well.

The Brazilian computer industry, which is currently facing major unfair trade practice charges, has hired a firm headed by former U.S. Ambassador to Brazil and former Assistant Secretary of State for Inter-American Affairs, Langhorne A. Motley. One of the vice presidents of Mr. Motley's firm is Clande L. Gingrich, former General Counsel to the USTR.

I strongly agree with Congressman Wolpe that it makes no sense, from the standpoint of our national interest, to have American negotiators sitting across the table from foreign representatives who are viewed as potential clients or employers. There are serious ethical questions raised concerning the propriety of former top U.S. officials enriching themselves by representing foreign governments and businesses, at a time when the U.S. is fighting for its economic life in the trade arena. The lives of millions of American workers and their families are at stake.

Lobbying and legal work on trade-related matters for foreign interests seems to be one of the newest and fastest "growth industries" in Washington, D.C. It is ironic that these firms are often more successful in preserving business for their clients, than U.S. firms and workers are at convincing our own government to save our industries and jobs. This was clearly demonstrated recently by the failure of U.S. workers and manufacturers to convince the Congress to override President Reagan's veto of the textile trade bill. American workers can only hope that they will not receive a similar response this year, as the Congress once again tries to pass meaningful trade reform legislation.

Chairman GIBBONS. We will ask both of you gentlemen to wait here and we'll be right back. We've got to go vote.

[Recess.]

Mr. PEASE [presiding]. The Chair apologizes to our distinguished witnesses for the delay. As our witnesses may know, we have the gun control bill on the floor of the House right now. It's an absolutely chaotic parliamentary situation, not to mention the significance of the substantive votes.

Well, let me thank both of you for your testimony, and I would like to ask a couple of questions if I could, which frankly were prompted mainly by your testimony, Mr. Bieber, but I would be happy to have Mr. Bywater's participation as well or any comments that you might have.

First, I'd like to just comment I think on a couple of things from your testimony, Mr. Bieber. One is, on page 2 your point that with the loss of some of our best manufacturing jobs, America is moving toward a two-tiered society characterized by many low-paying jobs and only a relative handful of high-paying jobs.

I think you are right, I think we are moving in that direction. The movement has been fairly small so far, so it's not all that perceptible, but I think by actual measure it is there, and certainly it is predictable that it's going to go farther in that direction if we keep losing our manufacturing base.

You note in your written testimony that only 60 percent of the workers found new jobs, and of those who did, a full 30 percent took significant pay cuts. That's something I think that Congress simply has to be aware of and follow, so I just commend you for bringing that to our attention.

It seems to me that what has made the United States of America great over the last 50 years especially has been a large middle class, and I would hate to see that threatened, going back to the old haves and have-nots that used to characterize this country.

We have another vote on, but I think I can finish up in 10 minutes so that you can go catch your plane. The other thing, just briefly, I would like to commend you for your support of my initiative on labor rights. We have talked about that before. You were kind enough to testify at our seminar a couple of weeks ago. I do think that that's an important direction in which to go, and I appreciate your support on that.

Now let me talk about some questions. You were here I think when I raised the question with Representative Zschau about the ability or willingness of American corporations to compete overseas once we have achieved a level playing field. I am increasingly concerned about that.

In other words, if we are successful in stopping unfairly traded goods from coming into our country, and if we are successful in inducing our trading partners to eliminate their unfair barriers to our exports going into those countries, and if we get the exchange rate of the dollar and other currencies into proper alignment so that there is a level playing field, that still means that American corporations are going to have to compete with Japanese and German and Korean and other corporations. And I guess I'm concerned about whether our corporations are willing to accept that challenge or not.

The emphasis in the U.S. corporations seems to be on short-term profit, not on long-term profitability, not on winning long-term market share, and American corporations it seems to me do not, in many cases, care to set up the sales organizations and service organizations and the other things that would be necessary to successfully compete overseas.

Could either of you comment on where you think the role of American corporations—what that role is in the future and whether they will meet that role?

Mr. BIEBER. Well, I have equal concern, and it's rather ironic but last week I appeared on a panel on United States-Japan trade at the University of Michigan and also talked on that subject. I am concerned about it because I think the American companies have to change their procedure, their posture. Unfortunately, our companies have looked at short-term return on investment. I think that some of the joint partnerships that have been worked out to be able to accomodate that sort of a structure turn around and create another competitor for that same company.

As you well know, I sit on the board of directors of one of the companies and I have argued and defended my responsibility, my fiduciary responsibility, to stockholders and saying that you have to look at long-term investment and long-term return, because to do otherwise many times, when you look at the short-term advantage, you are only building a competitor who subsequently becomes a competitor of that company.

And a good example is in the auto parts field where our companies go overseas, take advantage, exploit low labor rates, take advantage of suppressed workers rights and buy from a company which subsequently use that profit then to get into the market, producing a finished product which becomes a competitor of yours.

I am opposed also, quite frankly,—and I said it publicy—to the remuneration that the top executives of our companies receive. I am one who will fight for proper remuneration, but I must say that some of the salaries and bonuses and so on that we have seen reported in the last few days greatly concern me. I think everyone is entitled to their proper return on the efforts that they put in, but I must say that I do not find the means of convincing myself that anyone is worth some of the bonuses and the net profits that they have received in the last—that we have seen reported. And we haven't seen the last of them yet.

Mr. PEASE. Thank you. One other thing I mentioned earlier today was my concern about the recent price hikes announced by General Motors. It seems to me that with the change in the exchange rate between the dollar and the yen and Japanese companies being forced to raise the sticker prices of their cars, this would be a golden opportunity for GM, Ford, Chrysler, and American Motors to regain some of the market share they have lost to foreign competitors. And yet, it appears to me that the American companies may slip into their normal practice of taking advantage of a situation like this to increase their prices and their profit margins rather than their market shares. Would you care to comment on that?

Mr. BIEBER. Yes, sir. I join you in great concern over that because we have seen the price of Japanese cars increase approxi-

mately $1,200 since the dollar-yen relationship has gotten closer. I am concerned because first of all, I want to see what happens in the future. I also heard what the Japanese Government said when their auto companies a couple weeks ago said it's falling too fast; we can't stand this. Quite frankly, that raise should have been more, if you look at where it came—you know, how the currencies have adjusted.

But if you now turn around, as General Motors has done, and raise the price of our cars, then we leave them off the hook again. In addition to that, I don't understand that kind of market challenge or economics. I do not understand how you raise the price of the product at the time when the market is soft, and as a matter of fact, only a few days before you announce that you're taking some 90,000 units out of your production because you have an oversupply, and I think it's wrong. I hope that the other companies who have not followed them, the domestic companies, I certainly hope that they do not, and I have urged them not to.

Mr. PEASE. Thank you. Mr. Bieber, you mentioned in your testimony the manufacture of construction machinery which is having a difficult time maintaining its export business. As I recall, when we were discussing a year or so ago the question of restraints on steel imports coming into this country, one of the big manufacturers of export construction machinery urged us not to restrain steel coming in from overseas, with the argument that if they had to pay more for domestically produced steel, it would reduce their ability to compete in overseas markets.

That seems to argue that there are secondary effects to limitations on imports coming into this country. Could you share your thoughts on that?

Mr. BIEBER. Well, obviously that's correct, there are secondary effects. What disturbs me a great deal in that industry—it's rather ironic, but I opened the negotiations at Deere & Co. Monday this week and Caterpillar on Tuesday. What we are seeing there, Mr. Chairman, is unfortunately plants that are being closed and reduced. We had 4 years ago 25,000 plus workers in Peoria, IL in Caterpillar; today we have a little over 8,000. Overall in our section of the union, the membership in the ag imp and construction business has fallen off by 60 percent. What we're now seeing is a shift by those companies to go out and import the product that is then being sold in our country under their nameplate.

I was director of the western Michigan area of our union before I became vice president and subsequently president. I had two fairly large farm equipment plants there. They're gone. The two in our sister union are also gone. If you've seen recent statements, it now appears that the total production, almost total production of that company is going to be moved offshore.

The other thing that's troublesome in the auto industry is the fact of the so-called transplants—that's foreign companies that have come to our shores use very little of American supply. Today, if you look at one of the Japanese auto companies you will find that 30 to 40 percent is the high watermark of American content in those cars. To put it another way, if you take an American automobile company; true, pure American company, for every job that's created in that assembly plant, there are 11 more direct jobs and

about 20 plus jobs that flow out of that. In the transplant plant, you get three, and that's what's happening.

If I can go back to the other point, Mr. Chairman, what's happening is we're losing our industrial base, we're losing by the hundreds of thousands the good-paying industrial jobs. People who are fortunate enough to find any job are trading jobs of $10, $11, $12 an hour for jobs flipping the burgers which pay $3.35 to $4 if you happen to be in an area where they need a few extra burger flippers.

Mr. PEASE. Thank you very much. I think we're down to about 4 minutes on this vote so I'm going to have to recess the hearing. But let me thank both of our distinguished panel members for their contributions——

Mr. BYWATER. Mr. Chairman, can I just make one point to you? You talked about a level playing field. We can't get a level playing field no matter what we do, because we've lost many industries that will never come back to this country. In the television industry today, we only have 12,000 blue collar workers in the United States; that's all that we have working in the United States. We are the largest buyer of television sets in the world. No one even comes close to us. That industry, as far as I'm concerned, is virtually lost.

Mr. PEASE. OK, thank you very much we appreciate your testimony. We'll continue the hearing with Mr. Guarini in the Chair.

Mr. GUARINI [presiding]. Just so that we won't delay you gentlemen any longer, because I assume with the gun bill on the Floor there will be constant interruption.

Bill, you were talking about the color television industry. Now in our targeting when we think about certain kinds of industries—and you also spoke out about the electrical generator industry—we've got many industries that we're concerned with which we have to protect, and of course, the color television industry is one of them. Is that correct?

Mr. BYWATER. Yes. Congressman Guarini, I just want to make a point, if I may, on the television industry. In 1968, a number of American companies charged the Japanese with dumping their products in the United States. In 1971, 3 years of litigation later, they were found guilty. After they were found guilty and they were supposed to be assessed $600 million as a fine, it was reduced by the State Department to something like $60 million. Today, we're now in 1986 and it hasn't been settled yet, and that's a situation where in the meantime, the plants are gone, the people are gone; they'll never get those jobs back. The industry is virtually gone.

There's just a chance now of saving part of the color television industry in this country. Unfortunately, that has happened not just in television but many industries in the United States, and there are others that are being threatened to the same extent. Where we're going with this and what's going to happen, I don't know.

But I was interviewed one time by a Japanese union leader who came over to the United States and the AFL–CIO suggested he discuss the problems with me. So he came over and we discussed it. At the end of the discussion he said to me, what would you recommend to the Japanese Premier if you could tell him—give him your recommendation? I said I'd recommend to him that he make cer-

tain he doesn't kill the goose that laid the golden egg, and that's the American market. That's exactly what is happening now.

Now, the Japanese will have to start worrying about the Koreans. After the Koreans, maybe the Chinese, and India and who knows where else. What it comes down to is the point—I think that Congressman Pease's bill really addresses the problem. We, in effect, are really propping up dictatorships around the world where you don't have free labor at all, the people have no right to join a union, they can't complain, they can't do anything. Where the workplaces are just filthy and just—to such an extent that the people die young as a result of working in dangerous workplaces, and nothing is addressed to that particular problem.

I'm glad that finally, that is one particular point that's being raised here, or was raised here this morning, both by the UAW and myself. I also feel that's something you should really pay strict attention to if you're drafting any bill for trade, and that is, our trading partners should be trading partners that we deal with who understand at least democracy, and we don't have that when we deal with places like Korea, Taiwan, and some others. Japan, of course, is a democracy but the others are not.

Mr. GUARINI. Well, I visited China and I can tell you—and I've been to some of their plants—how cheap it is, that they labor and how hard the people work, and for 15 cents an hour—skilled labor. It's going to be pretty impossible to compete against that unless we're able to raise their living standards so that they have the same kind of working conditions that we have.

But there's a long-range problem and I guess part of it is addressed in the fact that we really don't have a national strategy for trade; we just bumble into our trade, thinking that we're still the great industrial nation after World War II, we're the one that was left standing, and that might have been so 40 years ago but we've never addressed ourselves to the realities of the present, and that goes into our trade law remedies as well.

There's another issue that concerns me also; the fact that we've learned from Japan under MITI that they can work together, industry, labor and government work together as a team. I think that's one of our deficiencies, and probably culturally it's a problem with us.

I'd like if I could, to ask you to address yourself as to how you think we could really better put ourselves working together for a common purpose instead of working against each other.

Mr. BYWATER. Well, I think Owen certainly can answer that, but I'd like to just make one point and then, Owen, you take it over. I certainly think that the unions have demonstrated over and over again the willingness to work for the betterment of all. We have tried that.

IUE, for example, is part of LICIT and we're part of COMPACT which is composed also of companies and unions working together for a common purpose. So we're certainly willing to do whatever we can to achieve those goals.

Mr. BIEBER. Let me just quickly address myself to your question. I think that everyone is very much aware that in our union, my union, we have made a great endeavor since 1982, 1984, to build in

more and more cooperative measures and trying to find ways to be the most competitive, build the highest quality product, et cetera.

But there is a tradeoff to that. It's very, very difficult to try to convince people that the wave of the future is greater cooperation when the net result is that that same cooperation that you're working with here ends up exploiting labor in Korea, Taiwan; seeks out the lowest wage rate throughout the world, and the net result is that the American worker who joins in that joint effort to be more competitive, to build a better quality product, ends up losing their job. It's very, very difficult to convince people that that's the road of the future, and there lies one of the problems that we face.

Now, we're not going to abandon the effort of trying to find more ways to be more cooperative. I think some of the new programs, some of the new contracts that we have put into place demonstrate that. We're striving to get greater employee input, but that means more than just input on the shop floor. I think the employee and the union that represents that employee needs to be a full partner if they're invited into a partnership. That includes being able to help and have an input into the decisionmaking of the future of that company, the future of that plant, the future of the community in which that plant is located. And that of course, takes us in through the whole argument of industrial policy, which some of you on this panel have heard me talk about before in the last 3 years.

But all of these things dovetail, and when Bill tells you about the plight of the color TV industry in this country, all I can say to all of you on this panel is you're seeing a replay of that in the auto industry and in the steel industry. If something isn't done quickly, then the final chapter of that play will be identical to what has happened in the color TV industry.

I plead with this committee and everyone else, let's not take America there. Our task is not to bring down America's living standard to the lowest common denominator in the world. I, too, Mr. Congressman, went to China. I don't want that living standard here. I am willing to help try and do what we can to bring the rest of the world's living standard up to ours. That ought to be our goal, not to reduce ours to that level. But that's where we're going unless we protect the industrial base of this country, unless we protect industries such as auto, because without it, we can't do it.

Mr. GUARINI. Thank you, Mr. Bieber, for your fine statement. I think that what is too seldom mentioned when we have a $300 billion military budget, that one of the most important things we can do for our national security in auto and steel and heavy industries, is to have a war potential which we're losing. Our shipyards are closing down. Our heavy industries are closing down. I don't know if we could be a free nation as only a service nation, which we more or less are turning toward. It's going in the wrong direction.

I believe the national defense issue, for anybody that's anti-communistically inclined, would certainly want to keep open our heavy industries, our plants, our shipyards, and our steel mills.

Mr. BYWATER. I wish you'd tell the Defense Department which is so patriotic, to buy American.

Mr. GUARINI. Well, I know you have a plane to catch, Mr. Bieber. There are a number of questions I wanted to ask you concerning

the substantial cause, but the record I think is very complete with the fine statements that you have made, and to Mr. Bywater, Bill, on macroeconomics and in regard to mandatory response to industrial targeting and mandatory trade adjustment—some of those things I was going to elicit from you, but in view of the fact that you are in a hurry, we do have your statements, you have made a very complete statement regarding the various bills that we have before us for consideration, and I very much want to thank you for your help and your advice to this committee.

Ed Jenkins may want to make a statement; he had just arrived. Mr. Jenkins?

Mr. JENKINS. Thank you, Mr. Chairman. I want to thank the panel for the work that you have done and for your continuing efforts on behalf of the domestic industry. I agree with you this is one of the critical areas. I think that the Nation must give some degree of protection to domestic industry. Otherwise, we do face a lower standard of living. I fully agree with you. Thank you for your testimony.

Mr. GUARINI. Thank you, gentlemen.

Mr. JENKINS [presiding]. Our next panel, if they will come forward, are Mr. Michael Stein of the Semiconductor Industry Association and Corning Glass Works; Mr. Richard Witte, Intellectual Property Owners, Inc.; David Foster and Paul Plaia, Jr., with the ITC Trial Lawyers Association; Mr. Donald Dinan of a law firm in Washington and a representative from GAO. The last witness will not be on this panel.

We will start with Mr. Stein. I want to welcome the panel here, and Mr. Stein, we will begin with you. You may summarize and your entire statement, of course, will be included in the record.

STATEMENT OF MICHAEL H. STEIN, COUNSEL, SEMICONDUCTOR INDUSTRY ASSOCIATION, AND CORNING GLASS WORKS

Mr. STEIN. Thank you, Mr. Chairman. My name is Michael Stein, I am a partner in the law firm of Dewey, Ballantine, Bushby, Palmer & Wood, and I'm appearing before you today on behalf of Corning Glass Works and the Semiconductor Industry Association.

SIA testified before you two days ago regarding antidumping proposals in the section 301 reforms. Today, SIA is joining Corning Glass Works to express its views on amendments to section 337.

Corning Glass Works and the members of SIA are U.S. corporations who employ over 150,000 persons. Both Corning and members of SIA have invested hundreds of millions of dollars in research that has yielded investments which have contributed significantly to making the United States a key competitor in high technology markets around the world.

Meaningful enforcement of U.S. patent, mask works and other intellectual property laws is extremely important to Corning and SIA because it goes to the heart of their ability to recoup the hundreds of millions of dollars they've already invested and their ability to continue to make the huge investments necessary for continued participation in these markets in the future.

Section 337 is a valuable tool in the enforcement of U.S. intellectual property rights against infringing imports. However, with the

rapidly increasing volume of imports that enter the United States each year, amendments are needed to strengthen the effectiveness of section 337 in enforcing these rights.

Corning and SIA support the objectives in the subcommittee's discussion draft of eliminating the need to prove that the U.S. industry is efficiently and economically operated and the need to show injury beyond that shown by infringement, while retaining the domestic injury requirement.

The infringement of intellectual property, without exception, injures the U.S. industries which own such property. Not only is the owner deprived of the return due it on the infringing sales, but the presence of infringers often makes licensing more difficult and the owner must incur substantial costs to enforce its rights against an infringer. Because infringement is always injurious to the company that owns the property, proof of infringement in section 337 investigations should constitute substantial injury within the meaning of the statute.

While it makes sense to eliminate the need to prove injury beyond that already shown by infringement, the requirement that a complainant establish that there is a U.S. industry exploiting the intellectual property should remain. The purpose of the ITC is to adjudicate trade disputes between U.S. industries and those that seek to import. Moreover, the issuance of an exclusion order makes little sense if it does not protect an industry within U.S. borders.

Section 337 should also be amended to eliminate the requirement that a complainant prove that the U.S. industry is efficiently and economically operated. This element is vague, highly subjective and, to its credit, the U.S. International Trade Commission has never denied relief on this basis. This element adds additional needless cost to the already high price of section 337 relief, and subjects U.S. industries to extensive discovery by counsel for foreign respondents to no good purpose.

Any amendments made to strengthen section 337 as an enforcement mechanism for individual property rights should include rights in registered mass works. Exclusive rights in registered mask works were created by the Semiconductor Chip Protection Act of 1984. This act expressly provides for the use of section 337 to enforce mask work rights. A relatively new form of intellectual property, mask works should not be overlooked in any amendments which affect the enforcement of intellectual property. These changes will not affect the GATT legality of section 337.

Thank you, Mr. Chairman.

[The prepared statement follows:]

TESTIMONY OF MICHAEL H. STEIN, APPEARING ON BEHALF OF CORNING GLASS WORKS AND THE SEMICONDUCTOR INDUSTRY ASSOCIATION, BEFORE THE HOUSE WAYS AND MEANS SUBCOMMITTEE ON TRADE, REGARDING AMENDMENTS TO SECTION 337 OF THE TARIFF ACT OF 1930

Introduction and Summary

Mr. Chairman, my name is Michael Stein. I am a partner in the law firm of Dewey, Ballantine, Bushby, Palmer & Wood, and am appearing before you today on behalf of Corning Glass Works and the Semiconductor Industry Association ("SIA"). The views expressed in this testimony are based upon my seven years as General Counsel of the International Trade Commission. They are not intended to reflect the views of Dewey Ballantine or of other clients of the firm. I would like to thank you and the other members of the Subcommittee for giving me the opportunity to appear before you today to testify on needed amendments to section 337 of the Tariff Act of 1930.

The SIA testified before you two days ago regarding the antidumping proposals and Section 301 reforms. Today, SIA is joining Corning Glass Works to express its views on amendments to section 337.

Corning Glass Works and the members of SIA are U.S. corporations which employ over 150,000 persons. Both Corning and members of SIA have invested hundreds of millions of dollars in research that has yielded inventions which have contributed significantly to making the United States a key competitor in high-technology markets around the world. Meaningful enforcement of U.S. patent, maskwork, and other

intellectual property laws is extremely important to Corning and SIA, because it goes to the heart of their ability not only to recoup the hundreds of millions of dollars already invested, but to their ability to continue to make the huge investments necessary for continued participation in these markets in the future.

Section 337 is a valuable tool in the enforcement of U.S. intellectual property rights against infringing imports. However, with the rapidly increasing volume of imports that enter the United States each year, amendments are needed to strengthen the effectiveness of section 337 in enforcing these rights. Corning and SIA support the objectives in the Subcommittee's discussion draft of eliminating the need to prove that the U.S. industry is "efficiently and economically operated," and the need to show injury beyond that shown by infringement, while retaining the domestic industry requirement.

The infringement of intellectual property, without exception, injures the U.S. industries which own such property. Not only is the owner deprived of the return due it on the infringing sales, but the presence of infringers often makes licensing more difficult, and the owner must incur substantial costs to enforce its rights against an infringer. Because infringement is always injurious to the company that owns the property, proof of infringement in section 337 investigations should constitute "substantial injury" within the meaning of the statute.

While it makes sense to eliminate the need to prove injury beyond that shown by infringement, the requirement that a complainant establish that there is a U.S. industry exploiting the intellectual property should remain. The purpose of the ITC is to adjudicate trade disputes between U.S. industries and those that seek to import. Moreover, the issuance of an exclusion order makes little sense if it does not protect an industry within U.S. borders.

Section 337 should also be amended to eliminate the requirement that a complainant prove that the U.S. industry is "efficiently and economically operated." This element is vague, highly subjective, and to its credit, the U.S. International Trade Commission has never denied relief on this basis. This element adds additional, needless cost to the already high price of section 337 relief, and subjects U.S. industries to extensive discovery by counsel for foreign respondents.

Any amendments made to strengthen section 337 as an enforcement mechanism for intellectual property rights should include rights in registered mask works. Exclusive rights in registered mask works were created by the Semiconductor Chip Protection Act of 1984 ("SCPA"). The SCPA expressly provides for the use of section 337 to enforce mask work rights. A relatively new form of intellectual property, mask works should not be overlooked in any amendments which affect the enforcement of intellectual property.

These changes will not affect the GATT legality of section 337.

The Need For Change

High-technology inventions are the result of years of research by highly educated individuals with advanced equipment and adequate financial resources at their disposal. It takes millions of dollars of high-risk investment, year after year, not only in research that ultimately yields a commercially useful invention, but in much research that ultimately fails and must be abandoned, to be competitive in high technology industries.

U.S. companies cannot afford to continue to take these large risks, if there is not some meaningful assurance that when the years of research do bear fruit, the inventors will be financially rewarded for their willingness to invest in America's future.

Corning and SIA applaud the efforts that many members of the House have made to improve the effectiveness of section 337 as a tool for the enforcement of U.S. intellectual property rights. With U.S. industries competing in an increasingly global marketplace, the need for effective tools for the enforcement of U.S. intellectual property against infringing imports has grown, and can be expected to continue to grow in the years to come.

Currently, to secure relief under section 337 against infringing imports, a complainant must establish, in addition to infringement (1) that an industry in the United

States is exploiting the patent, (2) that the U.S. industry is "efficiently and economically operated," (3) that the infringing imports have the effect or tendency of substantially injuring or destroying the U.S. industry; and (4) that the beneficial effect of any contemplated relief is not outweighed by any adverse impact on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers. While some of these elements make sense in the context of other unfair methods of competition, they do not make sense when the unfair act involved in is the infringement of U.S. intellectual property.

Infringing imports were not the primary concern of Congress when section 337 was initially enacted in 1922. As indicated by the scope of its language, section 337 was designed to cover a broad range of unfair acts not then covered by other unfair import laws. Senator Smoot called it a "dumping law with teeth." However, over the years, patent, copyright, and trademark infringement were recognized as unfair practices within the meaning of the section 337, and today, of course, section 337 is predominantly used to enforce U.S. intellectual property rights. The injury and efficient and economic operation requirements of section 337, designed for the antidumping context originally intended in the statute, make no sense in the intellectual property arena.

A Finding of Infringement Should
Satisfy The Injury Requirement.

The reason why the injury test makes no sense in the intellectual property context is that, unlike dumping or countervailing duties, or even other unfair trade practices such as false advertising or other business torts, the owner of intellectual property has been granted a temporary statutory monopoly for the purpose of encouraging innovation. Any sale in the United States of an infringing product is a sale that rightfully belongs only to the holder or licensee of that property. The importation of any infringing merchandise derogates from the rightful monopoly and diminishes the value of the intellectual property. Under such circumstances, requiring proof of injury, beyond that shown by proof of the infringement of a valid intellectual property right, should not be necessary.

In antidumping, countervailing duty, and escape clause cases, as well as section 337 cases involving unfair acts which are not based on intellectual property rights, an injury test is necessary because the U.S. producers have no right to prohibit sale in the United States of a

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free to compete. Thus, the U.S. industry is not necessarily harmed by such sales. However, as explained above, this is not the case with imports which infringe U.S. intellectual property, because any infringement has the effect or tendency of substantially injuring the U.S. industry involved.

The ITC and its reviewing court have generally recognized that lost sales alone may be sufficient to require an affirmative injury determination. For example, in Bally/Midway Mfg. Co. v. USITC, 714 F.2d 1117, 1124 (Fed. Cir. 1983), the court stated:

> Where the unfair practice is the importation of products that infringe a domestic industry's copyright, trademark, or patent right, even a relatively small loss of sales may establish, under section 337(a), the requisite injury to the portion of the complainant's business devoted to the exploitation of those intellectual property rights.

However, despite this direction from its reviewing court, the Commission has not always found injury in cases where there were substantial infringing sales. Opponents of this change in the statute assert that denials of relief on the basis of a no injury finding are rare, and therefore no amendment of the statute is necessary. Unfortunately, such denials are not rare. In any event, the rarity of a no-injury finding is, contrary to opponents' arguments, an excellent reason to establish the requisite injury by statute in intellectual property cases. If in fact the injury test does not provide significant protection for importers, then the substantial money and energy spent administering it is wasted.

Not only would this eliminate the present inconsistency in the way the Commission administers the injury test, it also would save substantial amounts of money and energy. Section 337 litigation is extremely costly. The substantial

expense of the injury portion of a section 337 adjudication is an additional reason to establish by statute that infringement is a sufficient showing of injury, especially if the outcome in any case is a foregone conclusion as opponents of the legislation argue. During my time at the ITC, I was appalled by the waste of resources occasioned by the injury test in intellectual property cases. The existence of the test raises the costs of litigation to the point where the case itself can often cost more than the relief is worth.

It has been suggested that problems with the present injury test could be solved by a statutory presumption that infringement constitutes injury. A rebuttable presumption will simply not remedy the current problems. With a rebuttable presumption, the additional injury test will remain an issue that will be litigated in all but default cases. The same risk that infringers will be allowed to import in blatant disregard of U.S. intellectual property rights would remain. In addition, the burdensome costs of litigating the issue will remain the same.

In summary, the injury test is vestigial, left over from a time the statute was expected to have a much different function. Section 337 should be amended to conform to modern business reality. Proof of infringement of valid intellectual property rights should satisfy the substantial injury requirement.

The Industry Requirement Should Be Retained.

While it does not make sense to require a showing of injury beyond that shown by infrigement, it does make sense to retain the requirement that a complainant show that it is an "industry in the United States." Section 337 is, by its terms, a supplementary remedy. Its procedures are "in addition to any other provisions of law. . ." 19 U.S.C. 1337(a). The United States District Courts have primary jurisdiction to adjudicate intellectual property disputes. Allowing holders of intellectual property rights who have no contact with the United States other than those bare intellectual property rights to utilize section 337 would increase its reach drastically, and would fundamentally alter the balance between the courts and the Commission. The purpose of the Commission is to adjudicate trade disputes between U.S. industries and those who seek to import goods from abroad. Retention of the requirement that the statute be utilized on behalf of an industry in the United States would retain that essential nexus. The ITC ought not become a patent court.

The "Efficiently and Economically Operated" Element of the Statute Should be Eliminated, at Least With Respect to Intellectual Property Cases.

The requirement that a section 337 complainant prove that the U.S. industry is "efficiently and economically operated" is extremely vague and highly subjective. In fact, in this era of intense competition and rapid change, any company that is not efficiently and economically oper-

ated simply cannot stay in business, with or without the aid of section 337. Nor does the requirement make sense in many situations. For example, how does one establish that a new, emerging industry is efficiently and economically operated? Understandably, and to its credit, the ITC has never denied section 337 relief on the basis that an industry was not efficiently and economically operated.

The test is not only superfluous, but also mischievous. The ITC rules of discovery provide in pertinent part:

> [A] party may obtain discovery regarding any matter, not privileged, which is relevant to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearings if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

19 C.F.R. § 210.30. Because almost every aspect of a company's business bears on its efficient and economic operation, almost every document in a company's possession becomes a possible target of discovery on this issue. (A foreign respondent, of course, is not subject to discovery on this issue.) Companies view this as a substantial risk because so much confidential information must be disclosed to counsel for one's foreign competitors. In addition, the extensive discovery on this superfluous issue contributes significantly to the already high price tag for securing section 337 relief.

In sum, the added burden of establishing that the U.S. industry is efficiently and economically operated is a highly intrusive element which adds significantly to the cost of bringing and defending a section 337 case, although it provides little protection for section 337 defendants, and has little relevance in the context of intellectual property-based cases.

We are aware of little or no opposition to the removal of this element from the statute. However, it has been suggested by some that, rather than eliminating this element entirely, Congress should merely change the point in the investigation at which it is considered by the Commission. Rather than making it an element of the basic violation of section 337, they propose that it should be made a public interest factor which must be considered before the ITC issues any relief.

Corning and SIA strongly oppose this suggestion. It appears to eliminate the test from the investigation with one hand, but it reintroduces it with the other. The inappropriateness of making the efficient and economic operation of a U.S. industry a public interest factor is underscored by comparing it to the public interest factors currently enumerated in the statute. All current public interest factors are broad-based national policy considerations distinct from the case at hand -- the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in

the United States, and United States consumers. These are the same factors which the President considers during his review of case.

The introduction of "the efficient and economic operation" of the industry as a public interest factor might have the ironic result of affording the factor greater weight than it has now, as any action by Congress is presumed to have significance. We urge you to eliminate the requirement.

Mask Works Should Be Included in Any Amendments to Section 337 Designed to Strengthen Enforcement of Intellectual Property Rights.

A mask work is an integrated circuit design, which generally consists of a multilayered set of stencils used in a photolithographic process to manufacture semiconductors. Because pre-existing U.S. intellectual property law did not effectively protect mask works, Congress enacted the Semiconductor Chip Protection Act of 1984 which granted temporary statutory monopolies in registered mask works similar to those granted by other U.S. intellectual property laws. The Semiconductor Chip Protection Act of 1984 expressly provides for the enforcement of mask work rights through Section 337.

As the most recently created form of intellectual property protection, mask work protection does not always come to mind immediately when discussing intellectual property issues. However, for comprehensive coverage of intellectual property, registered mask works should be included in any

amendments designed to strengthen the effectiveness of Section 337 as an enforcement mechanism for intellectual property rights.

The U.S. Semiconductor Chip Protection Act of 1984 is a model which other nations are seeking to follow. Within a year of Congressional enactment of the U.S. Act, Japan passed a chip protection act, and Canada and the European Community began the process of enacting such legislation as well. The World Intellectual Property Organization (WIPO) has also begun work on a chip protection treaty. This international interest in chip protection makes it particularly important that the U.S. chip protection enforcement scheme include the full recourse to Section 337.

Mr. Chairman, I would like to thank you and the other members of the Subcommittee again for having given me this opportunity to appear before you today. I would also like to thank the Subcommittee for the attention it has given to this legislation of great importance to the competitive strength of U.S. industries.

I would be happy to answer any questions that the Subcommittee may have at this time.

Mr. JENKINS. Thank you for your testimony, and I will wait until the rest of the witnesses have given their statements before asking questions. Mr. Richard Witte.

STATEMENT OF RICHARD C. WITTE, VICE PRESIDENT, INTELLECTUAL PROPERTY OWNERS, INC.

Mr. WITTE. Mr. Chairman, thank you for this opportunity to discuss the proposed amendments to section 337 of the Tariff Act. I'm appearing here today on behalf of Intellectual Property Owners, Inc. IPO is a nonprofit association whose members own patents, trademarks and copyrights. I am also chairman of the intellectual property task force of the National Association of Manufacturers. I'm a member of the Patent, Trademark and Copyright Council of the U.S. Chamber of Commerce, and I'm also chief patent counsel to Procter & Gamble Co.

All of these organizations support in principle legislation to improve the effectiveness of section 337. IPO's members include large corporations, small businesses and universities. They are responsible for a significant portion of the research and development conducted in the United States.

IPO believes effective patient protection is vital for encouraging R&D and its commercial development. If corporations believe their competitors will take a free ride on their R&D, they will have less incentive to invest in R&D. If U.S. patent owners can be protected against free riders who have no R&D expenses and who import into the U.S., thousands of U.S. jobs can be preserved.

IPO strongly endorses legislation to amend section 337 along the lines of this subcommittee's discussion draft bill.

The most important feature of the proposed amendments is that intellectual property infringement, without more, would be treated as injury for purposes of 337. By eliminatihng the requirement to prove injury, in addition to patent, trademark or copyright infringement, the bill would make 337 a much more effective remedy for U.S. manufacturers. It is difficult and expensive for a U.S. patentee to obtain relief under 337. The existing 337 has several requirements in addition to infringement that have to be met before relief can be ordered by the ITC.

There is no economic or legal rationale for keeping the injury requirement in the law for intellectual property cases. Eliminating the injury requirement would not, however, transform the ITC into a forum merely to litigate intellectual property rights.

The type of relief available from the ITC under 337 is different from the relief available in an infringement suit in a Federal district court, so there should be no concern over duplication of remedies. The ITC has in rem jurisdiction; it can take action against all imported goods manufactured offshore in violation of a U.S. patent. Such action against goods can be enforced at the border. District courts, because of their in personam jurisdiction, often are unable to enforce injunctions and damages against foreign persons.

Another difference between district court and 337 relief is the unavailability of money damages in the ITC; only injunctive relief is available under 337. Attorneys' fees and jury trials are not available in the ITC.

Under existing law, 337 relief is the only relief available to owners of U.S. process patents if the infringing manufacturing is being performed abroad. Currently, it is not infringement to import products made abroad by a patented process. We support the pending legislation to close this loophole. For example, H.R. 1069. But even if this loophole is closed, both 337 relief and district court relief should be still available. The magnitude and complexity of foreign patent infringement require a variety of legal remedies.

In addition to eliminating the injury requirement for intellectual property cases, other amendments to 337 are needed. We support eliminating completely the requirement that the ITC must find the U.S. industry to be efficiently and economically operated. It may be difficult, for example, for a newly established, technology-based industry to show that it is efficient. However, we favor retaining a requirement in 337 that there must be a properly defined industry in the United States.

We are unsure whether the discussion draft provision is flexible enough and whether it defines industry as broadly as the existing case law. For example, it should be redefined to cover U.S. organizations, university or private or even individuals whose function it is to do and license research whether or not they actually manufacture.

The discussion draft also may be too limiting in requiring an industry to exist. Currently, 337 permits relief against imports which would prevent the establishment of an industry. Some of the pending bills would broaden this to impair or prevent such establishment. H.R. 3777 would allow the industry requirement to be met if an industry exists or is likely to be established.

Owners of patents should not be denied relief against foreign competition if they are planning to establish an industry in the United States. Some industries in the United States built on new technologies may never be established if patent owners cannot fend off the free riders.

We hope an amended 337 will be included in your subcommittee's trade reform bill because it will help stop infringement by foreign competitors or taking a free ride on the R&D investments of U.S. companies.

[The prepared statement follows:]

IPO INTELLECTUAL PROPERTY OWNERS, INC.

SUMMARY OF STATEMENT OF RICHARD C. WITTE, VICE PRESIDENT
INTELLECTUAL PROPERTY OWNERS, INC.
BEFORE
TRADE SUBCOMMITTEE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

April 10, 1986

Intellectual Property Owners, Inc. (IPO) supports legislation to amend section 337 of the Tariff Act of 1930 along the lines of section 161 of the Subcommittee's discussion draft of March 21. Such legislation would help stop the loss of manufacturing jobs from the United States.

- The decline in U.S. industrial competitiveness is attributable in part to the inability of U.S. companies to enforce their patent, trademark and copyright rights against infringing imports.

- The most important feature of the proposed amendments to section 337 is that intellectual property infringement, without more, would be treated as "injury". By eliminating the requirement to show other economic injury besides infringement, the proposed amendments would reduce the burden and expense of obtaining relief under section 337.

- Patent cases at the U.S. International Trade Commission involving optical fiber waveguide technology and amorphous metals technology illustrate the need for more effective and less expensive relief.

- If the injury requirement is eliminated for intellectual property cases, section 337 will still be a trade statute. A number of differences exist between section 337 proceedings and district court proceedings.

- The requirement of existing section 337 that the ITC must find the U.S. industry to be "efficiently and economically operated" also should be deleted.

- IPO favors retaining a requirement in section 337 that there must be an "industry" in the United States, although the definition of industry in the discussion draft may be too limited.

- IPO also favors shortening the time period for determinations by the ITC on whether to issue temporary exclusion orders and favors certain other improvements in section 337.

STATEMENT OF RICHARD C. WITTE, VICE PRESIDENT

INTELLECTUAL PROPERTY OWNERS, INC.

before

TRADE SUBCOMMITTEE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

April 10, 1986

Mr. Chairman and members of the Subcommittee:

Thank you for this opportunity to discuss proposed amendments to section 337 of the Tariff Act of 1930.

I am appearing here on behalf of Intellectual Property Owners, Inc. IPO is a nonprofit association whose members own patents, trademarks and copyrights.

Although I am speaking today on behalf of IPO, I would like to note that I am chairman of the the Task Force on Intellectual Property of the National Association of Manufacturers; a member of the Council on Patents, Trademarks and Copyrights of the U.S. Chamber of Commerce; and chief patent counsel at Procter and Gamble Company. All of those organizations in principle support legislation to improve the effectiveness of section 337.

Introduction

IPO's members include large corporations, small businesses, universities and individuals. Members of IPO are responsible for a significant portion of the research and development conducted in the United States. IPO believes an effective system for protecting patent rights and other intellectual property rights is very important for encouraging R & D and commercial development of new technology.

The evidence is overwhelming that the industrial competitiveness of the United States has been slipping. Statistics relating to U.S. patents are one measure of the slippage.

In 1984, seven of the eleven corporations which received the largest numbers of U.S. patents were foreign-controlled. Ten years ago, only three of the top eleven were foreign-controlled. Last year the share of U.S. patents granted to foreign nationals was 43.9 percent, up from about 20 percent in the late 1960's. Last year the share going to Japanese nationals alone was over 17 percent.

IPO believes this decline in American inventiveness can be attributed in part to inadequate legal protection for inventions in this country. The seventeen year exclusive patent right to manufacture, use and sell inventions can give powerful incentives, but only if adequate legal remedies are available to enforce patents.

If companies believe their competitors are likely to take a free ride on their investments in R&D, they have less incentive to invest in R&D. If the owners of U.S. patents can be protected from free riders with no R & D expenses who import into the United States, many thousands of U.S. jobs can be preserved.

Effective patent protection in the U.S. helps U.S. companies most. U.S. companies still own about 70 percent of unexpired U.S. patents and U.S. companies are in the best position to exploit the U.S. market.

Eliminating The Injury Requirement

IPO strongly endorses legislation to amend section 337 of the Tariff Act of 1930 along the lines proposed by section 161 of this Subcommittee's discussion draft bill dated March 21, 1986, hereafter referred to as the "discussion draft".

We believe the most important feature of the proposed amendments is that intellectual property infringement -- without more -- would be treated as "injury" for purposes of section 337. Subparagraphs (B) and (C) in section 337(a)(1) as amended by section 161 of the discussion draft would achieve that result. By eliminating the requirement to prove other injury besides patent, trademark or copyright infringement, the bill would make section 337 a more effective remedy for U.S. manufacturers.

IPO's members who have had experience with proceedings under section 337 involving patent infringement have found the existing law to be less than satisfactory.

For example, a case filed by Corning Glass Works in 1984 against Sumitomo Electric Industries, Ltd. and Sumitomo Electric U.S.A., Inc. involved alleged infringement of patents concerned with optical waveguide fibers. Corning has committed nearly 20 years and over $200 million in research and development to optical waveguide fiber technology.

The complaint alleged direct infringement of Corning's U.S. product patent covering certain optical waveguide fibers, and the unauthorized importation of optical waveguide fibers manufactured abroad using Corning's

process patent covering a method for making optical waveguide fibers. The U.S. International Trade Commission (ITC) instituted an investigation. To get relief under section 337, Corning had to prove:

- o That Sumitomo had infringed Corning's patents;
- o That there was an optical fiber industry in the United States;
- o That the optical fiber industry was "efficiently and economically operated"; and
- o That the infringement had had the effect or tendency of destroying or substantially injuring the domestic industry

If Corning proved these elements, relief would then depend on whether the ITC believed imposing restrictions on imports of such infringing articles was in the public interest.

If Corning had brought a suit against a U.S. manufacturer in a federal district court under U.S. patent law, it would only have had to prove that its patents had been infringed. However, Corning could not have brought a corresponding action in a federal district court because the patented process was being used outside the United States. Corning's only course of action on the process patent was under section 337.

The Administrative Law Judge (ALJ) assigned to the case made a determination that precluded Corning from obtaining relief. Specifically, he found that Corning's patents were valid and enforceable, that the product patent was of "pioneer status," and that certain Sumitomo products infringed the product patent and were manufactured by Corning's patented process. He also found that there were two domestic industries, one under each of the two patents, and that both of these industries were efficiently and economically operated. However, he found that Sumitomo's imports did not have the effect or tendency to substantially injure either of those

industries. He therefore found no violation of Section 337. The Commission reviewed the ALJ's determination and affirmed it.

The ITC determined that the substantial injury requirement had to be taken as an independent element of the law, even in intellectual property-based cases. It further determined that Corning had not been substantially injured despite the finding of infringement. Corning has appealed this determination to the Court of Appeals for the Federal Circuit.

In a case filed in 1983, another IPO member, Allied-Signal Inc., was successful in obtaining an exclusion order under section 337 to stop infringing imports by ten Japanese and West German competitors, but Allied-Signal has testified that proving injury in the proceeding was very burdensome and expensive.

Allied-Signal developed and patented a process for the manufacture of amorphous metal strip, a thin metal film having a random structure more typical of glass than metal and exhibiting extraordinary properties. The company has spent over $85 million and 14 years developing amorphous metals technology. Allied-Signal believes amorphous metals will be the key to an entire new industry in the United States. There are estimates that the technology will support a billion dollar a year business in the foreseeable future.

Ultimately the ITC found that the 10 competitors had engaged in unfair trade practices within the meaning of section 337 as a result of their use of Allied-Signal's patented process abroad. A general exclusion order was issued by the ITC.

Fortunately for Allied-Signal, injury to a domestic industry was determined to exist, but a slight shift in the facts of the case could have

precluded relief on the basis that there was no injury to the domestic industry.

The fact is that it is difficult and expensive for a U.S. patent holder to obtain relief under section 337. Under existing section 337 injury is one of the main conditions in addition to infringement that has to be met before relief can be ordered. There is no economic or legal rationale for keeping the injury requirement in the law for intellectual property cases.

Existing patent law does not require it in cases involving infringement within the United States. Neither the General Agreement on Tariffs and Trade (GATT) nor any other international agreement requires it. A 1982 opinion by a GATT panel in the Spring Assemblies case stated:

> "... in the Panel's view, it could reasonably be said that in considering what were the essential elements in legislation dealing with patent based cases an injury criterion could only be considered irrelevant" (emphasis added).

We therefore support the provisions in the discussion draft eliminating the injury requirement for patent, trademark and copyright cases. We are also aware of several other bills in the House which would eliminate the injury requirement. The bills we have examined include H.R. 3777, reported by the Energy and Commerce Committee; H.R. 3776, which has been the subject of a hearing in the Judiciary Committee; and H.R. 4312, introduced by Representatives Frenzel and Lundine and referred to the Ways and Means Committee. These bills employ varying language, but they all appear to be generally satisfactory in the way they would treat the injury requirement for patent, trademark and copyright cases.

We cannot agree, however, with an approach proposed by some parties recently that would have section 337 merely state that intellectual property infringement is "presumed" to have the effect or tendency to substantially injure an industry. This approach would allow the respondents in ITC proceedings to continue to litigate over whether patent, trademark and copyright owners have been injured, thereby continuing the unnecessary burden and expense of the injury requirement.

We do recommend covering trade secrets and semiconductor chip "mask works", as well as patents, trademarks and copyrights, in subparagraphs (B) and (C) in section 337(a)(1) of the discussion draft. Some of the bills cover trade secrets and mask works, although they appear to need refinements in language. For instance, when referring to trade secrets, "misappropriated" would be a better term than "infringed".

Differences Between Section 337 and District Court Proceedings

Eliminating the injury requirement would not transform the ITC into a forum merely to litigate intellectual property rights. Section 337 would still be a trade statute.

Under the discussion draft and most of the other bills, an intellectual property owner would still have to show the existence of an industry in the United States in order to obtain an exclusion order from the ITC. The ITC also would still be required to consider the so-called "public interest" factors before excluding infringing imports -- specifically, the Commission would still have to consider "the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers...".

Exclusion orders issued by the ITC would still be subject to disapproval by the President of the United States for policy reasons.

Also, the type of relief available from the ITC under section 337 is different in several respects from relief available to a patent owner in a patent infringement suit in a Federal district court, so there should be no concern over duplication of legal remedies. The ITC has in rem jurisdiction. It can take action against all imported goods manufactured offshore in violation of a U.S. patent. Such action against goods can be enforced by the Custom Service at the border, thereby securing effective enforcement.

It seems to us that section 337 can still be justified as compatible with GATT if the injury requirement is eliminated. Section 337 is "necessary" to secure enforcement of patent, trademark and copyright laws within the meaning of Article XX(d) of GATT. It is needed to secure the enforcement of judgments against persons engaged in practices offshore resulting in piracy and infringement. The district courts, by virtue of their in personam jurisdiction, often are unable to enforce injunctions and damages against foreign persons.

Another difference between district court relief and section 337 relief is the unavailability of monetary damages in ITC proceedings. Only injunctive relief preventing future activity is available under section 337. In addition, attorney fees are not available under section 337, nor are jury trials available at the ITC.

Temporary relief is not available as quickly from the ITC as it can be in a Federal district court. Moreover, a patent suit in a district court could be less expensive for a patent owner, even if the amendments to section 337 are enacted, where there are only a few infringers.

Under existing law, section 337 relief is the only relief available to owners of patents covering manufacturing processes if the manufacturing is being performed abroad. Currently, it is not patent infringement to import products into this country made abroad by a patented process. We support pending legislation to close this loophole in U.S. patent law (e.g., H.R. 1069), but even if the loophole is closed, both section 337 relief and district court relief should still be available. The magnitude of the problem with infringement of intellectual property rights by foreign competitors calls for a variety of legal remedies.

Other Changes in Section 337

In addition to eliminating the injury requirement for intellectual property cases, other amendments of section 337 are needed.

We support eliminating the requirement that the ITC must find the U.S. industry to be "efficiently and economically operated". It may be difficult for a newly established, technology-based industry to show that it is efficient.

The discussion draft in effect eliminates the "efficiently and economically operated" requirement for patent, trademark and copyright cases, because the requirement is not included in the definition of "industry" in paragraph 337(a)(2) in the discussion draft. Some of the other bills strike the phrase "efficiently and economically operated" from section 337 entirely.

We disagree with the idea expressed in recent testimony in the Judiciary Committee that it is adequate merely to move the efficient and economic operation requirement to a different part of section 337, so that the requirement would become one of the "public interest" factors to be

considered by the ITC when deciding whether to grant relief. The burden and expense to intellectual property owners of litigating over this requirement should be eliminated. Unnecessary requirements can deter patent, trademark and copyright owners from filing complaints.

We favor retaining a requirement in section 337 that there must be an industry in the United States. We assume the definition of "industry" in paragraph 337(a)(2) of the discussion draft, which refers to an industry that "manufactures, produces, processes, or mines", is meant to codify the industry requirement of existing law. We are unsure whether paragraph (a)(2) is flexible enough, and whether it defines industry as broadly as existing case law.

We note that other bills use different language in defining the requirement for a U.S. industry. For example, H.R. 3777 refers to "an industry consisting of the United States operations of the owner of the intellectual property at issue and its licensees, devoted to the lawful exploitation of the rights..." A discussion draft recently circulated in another committee in the House defines industry as including "a substantial investment in facilities or activities related to the exploitation of patents, copyrights, trademarks, or mask works... including research, development, licensing, sales, and marketing." A still different approach is used by H.R. 4312, which merely refers to "an industry that the Commission has found to exist", apparently continuing the existing case law.

If a U.S. intellectual property owner has made an investment in exploiting intellectual property rights in the United States, or an investment in research and development in the United States, perhaps that should satisfy the industry requirement. In any event it should be made

clear that universities and other intellectual property owners who license their rights to manufacturers are eligible to obtain relief. We would be glad to provide suggestions to the subcommittee on specific language for the bill relating to the definition of industry.

Paragraph (a)(2) in the discussion draft also may be too limiting in requiring an industry in the United States to "exist". Currently, section 337 permits relief against imports which would "prevent the establishment" of an industry. Some of the pending bills would broaden this to read "impair or prevent" the establishment. H.R. 3777 would allow the industry requirement to be met if an industry exists or is "likely to be established". Owners of patents in rapidly changing, high technology industries should not be denied relief against foreign competition if steps are being taken to establish an industry in the U.S. Some industries in the U.S. built on new technologies may never come into existence if patent owners cannot fend off free riders.

We favor shortening the time period for determinations by the ITC on whether to issue temporary exclusion orders. A provision in section 161 of the discussion draft would set a deadline of 90 days after the date on which the ITC commences its investigation. Other bills set the deadline at 90 days after the party petitions for the order. We believe the deadline should be as short as practical. Eliminating the injury requirement should facilitate earlier determinations by the ITC on temporary exclusion orders, because investigations would be simpler.

We wish to mention the following additional amendments of section 337 that we believe deserve consideration by the subcommittee. While perhaps less important than eliminating the injury requirement, these provisions,

which are included in title II of H.R. 3776, for example, should help make relief under section 337 more effective. The provisions are as follows:

- o Amendment of subsection 337(f)(1) to make it clear that the ITC can issue both an exclusion order and a cease and desist order;
- o Amendment of subsection 337(f)(2) to increase the maximum civil penalty;
- o Addition of a new subsection 337(g) which would add seizure and forfeiture to the remedies available (We note that the forfeiture provisions in H.R. 3776 seem to duplicate forfeiture provisions that already exist for trademark and copyright cases);
- o Addition of a new subsection 337(h) to facilitate the issuance of relief directed against defaulting respondents;
- o An amendment to existing subsection 337(h), relettered as subsection (j), to ensure the finality of ITC determinations by confirming that the burden of proof is on the petitioner in any further proceeding to modify or rescind an order or determine that there is no longer a violation, and that relief can be granted only on the basis of new evidence or evidence which could not have been presented in the prior proceeding.

We urge the subcommittee to include section 337 amendments in its trade reform bill. Amendment of section 337 is an urgent matter because it will help stop piracy and infringement by foreign competitors who are taking a free ride on the investments of U.S. companies.

Other Intellectual Property Issues

We question whether the proposed penalty in section 162 of the discussion draft for sale or transportation of counterfeit goods is

necessary. The Trademark Counterfeiting Act of 1984, Public Law 98-473, chapter 15, provides severe penalties which appear to apply to all of the activities covered by proposed section 162.

We note with approval that protection of intellectual property rights is included in section 172 of the discussion draft in the list of trade negotiating objectives. We believe it is important for the United States to take aggressive action, both in bilateral and in multilateral negotiations, to obtain more effective intellectual property laws in foreign countries for the benefit of U.S. intellectual property owners.

* * *

This concludes my prepared remarks. I would be pleased to respond to any questions.

Mr. JENKINS. Thank you very much. Mr. Foster.

STATEMENT OF PAUL PLAIA, JR., CHAIRMAN, LEGISLATION COMMITTEE, ITC TRIAL LAWYERS ASSOCIATION, ACCOMPANIED BY F. DAVID FOSTER, VICE CHAIRMAN, LEGISLATION COMMITTEE

Mr. PLAIA. Mr. Chairman, my name is Paul Plaia, I am from the law firm of Plaia & Schaumberg in Washington, DC. Accompanying me here today is David Foster of the law firm of Ablondi & Foster, also of Washington, DC. We are respectively the chairman and vice chairman of the legislation committee of the ITC Trial Lawyers Association.

The Trial Lawyers Association is a national professional association of more than 300 lawyers who practice before the U.S. International Trade Commission. The purpose of our association is the improvement of the operation of international trade laws particularly section 337 of the Tariff Act of 1930.

The association's members are lawyers, a majority of which are probably intellectual property lawyers. These lawyers represent domestic manufacturers and industries, importers, foreign manufacturers, and industries. The members include inside counsel to companies as well as outside counsel to companies. Our association, it can be seen, represents a rather wide spectrum of lawyers who prosecute section 337 cases and who defend such cases before the International Trade Commission.

Mr. Chairman, we prepared a detailed lengthy comment paper which we have already submitted in writing. I would request that that statement, Mr. Chairman, be made part of the record.

Mr. JENKINS. Without objection, it will be made a part of the record.

Mr. PLAIA. And it is my purpose, then, as I continue here today, to summarize very briefly the association's position as set forth in our comments. While the association agrees with the objectives of the proposed amendments to section 337, we believe that some of the specific provisions will not accomplish this objective. When I speak of an objective, Mr. Chairman, I mean we want, just like my colleagues here at the table, for the statute to continue healthy like it has in the past for the next decade and the decade after that, and to be effective during that period of time.

Specifically, we oppose the elimination of the requirement that some economic harm be demonstrated to a U.S. industry in patent, trademark, copyright, trade secret, and mask work cases. The basis for our position can be summarized with three points.

First, we believe that the elimination of the injury requirement would subject the statute, section 337, to needless opposition because of its asserted inconsistency with U.S.-international obligations; in particular, the General Agreement on Tariffs and Trade [GATT]. The result of increased challenges would be to make relief less predictable and less useful. We question whether the need justifies the risk. This is because the injury requirement has rarely been dispositive of section 337 cases. In fact, very few cases have turned on a decision in regard to the injury requirement.

Second, we believe that the proposed amendments would turn the ITC into a patent court without constitutional article III at-

tributes. We would note that the present commission contains one lawyer, and past commissions have had the tendency not to contain lawyers, also.

It was noted by Chairwoman Stern of the ITC in her testimony before the Judiciary Committee—she stated that it was her belief that the proposals would expand the jurisdiction of the ITC beyond its traditional or historical expertise, which is in the economic international trade area.

Finally, there is the question of fairness. The proposals before the Congress would not eliminate consideration of the economic issues to which they address themselves by either the President or the International Trade Commission. As pointed out by Chairwoman Stern, these matters would continue to be considered; however, these would be considered in what we call the public interest phase of an investigation without a due process record upon which to develop facts. Presidential consideration of these matters would not include a hearing at all.

Finally, in regards to our overall position, the association opposes the elimination of the injury—excuse me—of the industry requirement. This would open the statute to purely foreign intellectual property actions. We believe that such actions are properly left to the courts.

It is also our belief that foreign companies will make considerable use of the statute since a large portion of U.S. patents are being issued to foreign companies.

Mr. Chairman, the association thanks you for the opportunity to appear and present our comments.

[The prepared statement follows:]

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APRIL, 1986

COMMENTS OF THE ITC TRIAL LAWYERS ASSOCIATION*
ON PROPOSED AMENDMENTS TO SECTION 337
INVOLVING UNFAIRLY TRADED IMPORTS

SUMMARY OF ASSOCIATION POSITION ON THE SUBCOMMITTEE ON TRADE OF THE COMMITTEE ON WAYS AND MEANS DISCUSSION DRAFT TRADE BILL AND ON H.R. 3776 AND SIMILAR BILLS PENDING BEFORE THE CONGRESS

A number of bills** have been introduced in the House which would radically amend the provisions of Section 337. The Subcommittee on Trade of the Ways and Means Committee has also issued a discussion draft trade bill amending Section 337. The Association has studied and

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* The ITC Trial Lawyers Association ("Association") is a professional organization of more than 340 lawyers who practice before the U.S. International Trade Commission. The Association has as its purpose the advancement and improvement of the operation of the international trade laws, and, in particular, Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) ("Section 337"), a law which permits the exclusion from entry into the United States of articles which are unfairly traded and which injure a U.S. industry. The Association is a national professional association whose members are attorneys, including a large number of patent attorneys, representing U.S. manufacturers and industries, as well as foreign manufacturers and importers of foreign articles, and which includes outside counsel to corporations as well as in-house counsel.

** Among such bills are H.R. 3776 introduced by Congressman Moorhead (R-CA), and H.R. 3777 introduced by Congressman Dingel (D-MI).

analyzed the amendments proposed in these bills and opposes enactment of certain of their key provisions as now drafted.

While the Association agrees with the apparent objective of these bills to make Section 337 more effective and efficient, and indeed agrees with many of the specific provisions, the Association believes that the bills as a whole do not accomplish their objective. To the contrary, some of the amendments proposed in the bills, if adopted, would severely interfere with the effectiveness of Section 337 and make it less useful in protecting U.S. intellectual property interests. The Association believes strongly that before any amendments are made to Section 337 affecting its use for years to come, the appropriate legislative committees of the Congress should thoroughly consider whether the purported gain from certain proposed amendments is worth risking the future effectiveness of the statute as well as other adverse effects on U.S. intellectual property rights.

The Association specifically opposes the elimination of the requirement in Section 337 that some economic harm be demonstrated to a U.S. industry in patent, trademark, copyright, trade secret and maskwork cases.

The injury requirement has rarely been determinative of whether relief will be provided under Section 337 (in only 1 contested case in 221 investigations instituted and completed). Eliminating the injury requirement:

1. would subject Section 337 to needless opposition because of its inconsistency with our international trade obligations (particularly the General Agreement on Tariffs and Trade ("GATT")), resulting in increased challenges to Section 337 actions, retaliation against U.S. exports, and increased disapproval of relief by the President following affirmative ITC decisions; thus making relief under Section 337 unpredictable and less useful;

2. would interject Section 337 into the upcoming multilateral trade negotiations and interfere with or prevent accomplishment of U.S. intellectual property goals for such negotiations, such as conclusion of an anticounterfeiting code;

3. would increase duplicating litigation by encouraging unsuccessful parties before the ITC to retry the issues in the federal courts or, having failed in the courts, retry the issues at the ITC.

4. and, as noted by Chairwoman Stern of the U.S. International Trade Commission (ITC) in her recent

testimony before the House Judiciary Committee, would (along with the elimination of the domestic industry requirement as proposed in the bill) expand the jurisdiction of the ITC far beyond international trade matters and turn the ITC into an international patent court.

Based on the foregoing, the Association believes the adverse effects of eliminating the injury requirements in Section 337 outweigh the supposed benefits.

The Association also opposes the elimination of the need to demonstrate the existence of a domestic industry under Section 337 in patent, trademark, copyright, trade secret and maskwork cases. Section 337 was enacted to protect an established, or about to be established, United States industry from unfair trade practices. Removal of the domestic industry requirement in patent, trademark and copyright cases would have the anomalous result of permitting foreign companies with no economic stake in plants or equipment in the United States to petition the ITC to prevent U.S. companies from importing a component of a product for assembly in the United States. Indeed, the proposed amendments would also permit a foreign company with no economic presence in the United States to use the ITC to prevent another foreign company which also has no economic presence in the United States from importing an article.

The Association also opposes any change in the parity that now exists under Section 337 with respect to the treatment of process and product patents. While the bills are not intended to change the protection afforded process patents under Section 337a, the language is unclear and may well be interpreted as changing this important right.

The Association supports the apparent intent of the bills to amend the temporary relief provisions of Section 337, but notes that the time limit provided in the bills for decisions on temporary relief may be too brief to accomplish the objective of providing more effective and timely relief for complainants.

The Association supports the default provisions of the bills, which permit the U.S. International Trade Commission (ITC) to presume facts alleged in the complaint without further evidence, for the purpose of issuing relief limited to a defaulting party after consideration of the public interest.

The Association endorses the provisions of the bills which place the burden of proof upon a petitioner seeking an advisory opinion from the ITC or a modification or rescission of an existing order issued under Section 337, but opposes the provision which attempts to legislate the standard of evidence which may be considered by the ITC in connection with such an

advisory opinion, modification or rescission action.

Finally, the Association opposes the enactment of the provisions providing for forfeiture of imported products covered by an exclusion order. It is an unnecessary and overreaching penalty. These provisions would treat importers differently from domestic producers who infringe intellectual property rights, and create an application of the U.S. patent and intellectual property laws beyond the intended scope of such laws.

OVERVIEW OF THE CURRENT LAW

Section 337 of the Tariff Act of 1930 has not changed in substance since its enactment. It declares unlawful unfair methods of competition and unfair acts in the importation of articles into the United States, or in the sale of an imported article in the United States, the effect or tendency of which is substantially to injure an efficiently and economically operated United States industry, or to restrain or monopolize trade or commerce in the United States. A violation of this law usually leads to exclusion from entry into the United States of the articles connected with the unfair trade practice. Such an exclusion order normally covers not only articles of persons over whom personal jurisdiction existed and who participated in the proceedings to determine violations, but also articles of importers and foreign manufacturers who never participated in the proceedings and over whom no personal jurisdiction existed in the United States. Such an order can apply to the articles of persons who did not start to produce the articles until well after the order was issued. As such, it is an extraordinary remedy which allows extremely broad relief to a holder of intellectual property rights or some other individual harmed by an unfair trade practice.

Section 337 is administered by the ITC which, by virtue of procedural amendments to the statute in 1974, conducts an investigation under the adjudicatory provisions of the Administrative Procedure Act. The determination of violation is made initially by an administrative law judge of the ITC, whose decision is subject to review by the Commission. Final ITC decisions are subject to review by the President only for "policy reasons." If the President disapproves an ITC decision, the order of the ITC is not effective. A final effective exclusion order of the ITC is administered by the U.S. Customs Service, which determines if an import is covered by the exclusion order.

Section 337 has operated satisfactorily in the past decade to accomplish the intent of Congress. There have been over 240 cases instituted under Section 337 since its amendment in 1974. The vast majority of these cases have been based on allegations of infringement by imports of U.S. intellectual property rights, i.e., patents, trademarks or copyrights.

Seventy percent of the completed cases were resolved in favor of the domestic complaining party by virtue of the entry of an exclusion order, a consent order or a settlement agreement. The foregoing is the case despite the fact that the law now requires injury to a U.S. industry by the offending importations. In fact, this requirement has existed in Section 337 since the adoption of its precursor statute in 1922. In only one (1) contested case out of 221 completed cases under Section 337 since the 1974 amendments has the complaining party been unsuccessful by reason of the injury requirement. This is not an indication of a major impediment to relief.

THE PROPOSED AMENDMENTS

I. THE INDUSTRY REQUIREMENT

The bills seek to amend Section 337 by eliminating the requirement that an industry seeking relief for unfair trade practices involving infringement of a patent, trademark, copyright, trade secret or maskwork be "efficiently and economically operated" in the United States. Under the amendments the existence of the domestic industry would be established simply by ownership of a valid United States patent, copyright, trademark, trade secret or maskwork. The Association opposes this provision.

These amendments, along with the amendment discussed below provide that all one would have to show to establish a violation of Section 337 is that the unauthorized imported article infringes an intellectual property right. This must be viewed against the fact that exclusive jurisdiction for the determination of patent and copyright cases resides in the United States District Courts pursuant to 28 U.S.C. § 1338(a). Legislation which amended Section 337 in 1974 clarified the ITC's jurisdictional position in its consideration of unfair trade practices involving infringement of a U.S. patent. The legislative history makes it clear that patent validity determinations of the ITC are properly not accorded res judicata effect because the ITC has no jurisdiction to determine patent validity, except to the limited extent necessary to decide a case otherwise properly before it. See S.Rep. No. 93-1298, supra, 1974 U.S. Code Cong. & Ad. News at 7329.

Under current law in order for a case to be properly before the ITC it is necessary to establish that there is an "efficiently and economically operated" domestic industry facing unfair acts of importation which have the effect or tendency to substantially injure that industry. The proposed amendments, by removing this requirement, will effectively destroy the exclusive jurisdiction of the United States District Courts to determine

matters affecting patent and copyright infringement and validity and turn the ITC into an international patent court where the only requirement for jurisdiction will be ownership of a United States patent or copyright and an act of importation which is an infringement thereof.

The proposed amendments will open the floodgates of litigation before the ITC by, inter alia, foreign companies. Elimination of the requirement of an "efficiently and economically operated" industry in the United States would mean that an investigation by the ITC could be initiated upon receipt of an allegation that a valid United States patent, trademark, copyright, trade secret or maskwork has been infringed. The ITC would become available not only to substantially injured or threatened United States industries but to any owner of United States intellectual property rights without regard to whether it has an established industry in the United States or is about to establish an industry in the United States. Accordingly, a foreign company whose only nexus to the United States is ownership of a valid U.S. intellectual property right could sue a United States company which was importing a component of a product for assembly in the United States or the complete product itself. For example, a Japanese company which owns a United States patent could complain of unfair trade practices before the ITC if a U.S. company manufactures products in Hong Kong and then imports them into the United States, even though that Japanese company has no established industry in the United States. Consider the even more anomalous situation in which a Japanese company with no economic presence in the United States seeks to have the products of a German company, which also has no economic presence in the United States, excluded.

Since foreign companies have expressed an interest in using Section 337 in the past, an influx of complaints on behalf of foreign interests can be expected. With these changes in Section 337, foreign concerns would not only have an incentive to burden the U.S. administrative process to their economic advantage, but they would be given the tools to do so. Consider that, of the eleven companies having the most U.S. patents granted in 1984, seven were foreign. In addition, forty-two percent of all U.S. patents issued in 1984 were issued to foreign companies. (USA Today, Money, p. 1, Sept. 14, 1985; N.Y. Times, Sept. 24, 1985).

If the proposed amendments were to become law, investigations would no longer involve the economic expertise of the ITC which is central to its present jurisdiction over trade cases. There would no longer be a need to determine whether an industry is "efficiently and economically operated," and no longer be a need to determine whether the acts of importation have an effect or tendency to cause harm to a domestic industry. The only issues to be decided by the ITC would be

validity and infringement of the intellectual property right owned by the complainant. The ITC has no special expertise to handle such judicial issues. In fact, only one of the present Commissioners is a lawyer, and in recent history the Commission has been comprised of a majority of non-lawyers. The increased case load will require major increases in the staff of the ITC and larger appropriations. The case load in the federal courts will not be reduced by reason of the proposed amendment to Section 337.

Persons who now choose to proceed against foreign importers in the ITC do so because of the extraordinary remedy which can be obtained. The ITC can issue an order that bars not only the goods of a respondent, but of those who never participated in the proceedings and even those who first produce the goods long after the decision was rendered. This in rem jurisdiction is much broader than that which can be obtained in a Federal District Court.

One important effect of the proposed amendments will be to deny respondents access to an Article III court which currently have exclusive jurisdiction over issues involving patent and copyright pursuant to 28 U.S.C. § 1338(a). Respondents before the Commission are denied the right to a jury trial and may not counterclaim for infringement of any of their patents which are being infringed by the complainant. Thus the respondent whose patent is being infringed by a complainant can seek relief only in a federal district court while the complainant obtains an exclusion order on an abbreviated time schedule, removing the respondent as a competitor in the United States market. The inequality of this situation needs no further elaboration.

In conclusion, there is serious doubt concerning the value of having the ITC -- an administrative agency not equipped with any specific expertise in the area of intellectual property rights -- invest valuable time and resources into investigations whose sole purpose will be determination of intellectual property issues. By proposing to eliminate the requirement of injury to an operating industry in the United States, the amendments seek to fundamentally alter the purpose for which Section 337 was enacted, namely, as an international trade statute to protect an established or about to be established United States industry from harm.

II. THE INJURY REQUIREMENT

A. General

The proposed amendments would eliminate the injury requirement from Section 337 in patent, trademark, copyright,

trade secret and maskwork cases. The Association opposes such amendments. It is the Association's position that a test of economic harm should remain in Section 337.

This proposed change in the statute would raise anew questions of whether Section 337 is consistent with United States obligations under international agreements, and in particular the GATT. The status of Section 337 under the GATT is not secure as it now stands. Little comfort can be derived from any past consideration of Section 337 by the GATT contracting parties. The recently instituted Aramid Fiber investigation by the European Communities shows that our trading partners are concerned about Section 337. Further, these renewed questions would occur in the context of the United States no longer enjoying "Grandfather" immunity.

Any renewed focus on Section 337 actions taken against other countries' exports to the United States will likely result in demands for retaliation against U.S. exports. This is indeed the crux of the Aramid Fiber investigation now before the European Communities. Borrowing on U.S. practice under Section 301 of the Trade Act of 1974, if countries find Section 337 inconsistent with U.S. GATT obligations, retaliation against the United States is certainly a real alternative.

Renewed consideration of Section 337 resulting from the proposed amendment will also interject Section 337 into the upcoming trade negotiations, which are likely to include serious consideration of important intellectual property issues. Countries not interested in achieving positive results will use the amendments to Section 337 to delay and obfuscate. Particularly vulnerable to this sort of tactic will be the anticounterfeiting code. Developing countries can be expected to use an amendment to Section 337 as a foil against consideration of the code and use it to influence even developed countries to postpone consideration. The chances for an anticounterfeiting code would accordingly be substantially diminished.

Further, it is appropriate for an injury test to be applied in Section 337 cases even if the ITC does not consider injury in its investigation. There is no doubt that the extent of injury being experienced by those persons, firms or industries included in the amendment will become an important factor in the Commission's determination of whether it is in the U.S. public interest to grant relief. This mandated consideration is not subject to adjudicatory proceedings, so the opportunity will exist for relatively untested arguments on injury to be made; arguments which now are made subject to cross-examination and discovery. Further, there is no doubt that foreign governments and companies will argue that the President should disapprove an action of the Commission because the intellectual property owner has relief available in the district courts and that, if the

United States takes action, it will be faced with an international challenge under GATT and be subject to retaliation. Such challenges may interfere with general trade relations without benefiting any industry in the United States. These are powerful arguments which can be made behind closed doors, with no review of the President's decision possible under existing law. The result will be increased uncertainty as to whether relief will be provided under Section 337 and greatly diminish its effectiveness.

B. International Agreements

As set forth above, Section 337 substantive jurisdiction has remained unchanged for over fifty-five years. In 1973 the Congress considered the elimination of the injury requirement from Section 337. However, the Trade Act of 1974 retained the historical injury requirement. The requirement was retained for two important reasons:

(1) To leave the substance of Section 337 unchanged and therefore not disturb the "Grandfather" status of the section under GATT; and

(2) To make sure that Section 337 remained a trade statute as intended and not be injected into the then pending Multilateral Trade Negotiations by disturbing the uneasy acceptance accorded Section 337 internationally.

In the half century since its enactment, the only changes in Section 337 were procedural. Indeed, the Senate Report on the 1974 Act, in addressing the amendments to Section 337, stated:

> "No change has been made in the substance of the jurisdiction conferred under Section 337(a) with respect to unfair methods of competition or unfair acts in the import trade." (S.Rept. No. 93-1298, 93rd Cong., 2nd Sess., p.194 (Nov. 26, 1974)).

By preserving its substance, the section continued to be consistent with GATT by virtue of the "Grandfather Clause" of the Protocol of Provisional Application (¶ 1(b)). The Protocol insulates legislation in existence on October 30, 1947, which is inconsistent with GATT obligations, from the requirement that it conform to such obligations and in effect permits amendments to such legislation only if such amendments do not change the substance of the existing statute. It was in recognition of the necessity of insuring that the proposed amendments were substantively the same as the provisions existing on October 30, 1947, that the injury requirement was retained. Such a precaution was responsive to the Interim Commission for

the International Trade Organization's statement that the Contracting Parties to GATT are " . . . expected not to enact any new legislation that is inconsistent with it." (GATT Reports 8 (Jan. 1948-Aug. 1949)).

C. The Spring Assemblies Case

Some proponents of the elimination of the injury criterion argue that Section 337 is safe from attacks as inconsistent with U.S. GATT obligations based upon the GATT panel decision referred to as the Spring Assemblies case. They assert that Spring Assemblies held that Article XX(d) of the GATT exempted Section 337 actions from the requirement that it be consistent with the provisions of GATT. Such assertions are ill-founded.

The panel decision in Spring Assemblies was referred to the GATT Council for consideration. Absent adoption of a panel report by the Council, the report does not constitute GATT precedent. In the initial consideration of this decision, Canada, the European Communities and the Nordic countries all expressed disapproval of the panel report and urged its rejection, and were joined in part by Japan. The only countries supporting approval of the report were the United States and Australia. No final action was taken at the first consideration.

The panel report was again considered by the Council at its May 1983 meeting. A decision was made to adopt the panel report, but only after it was agreed that the report would, in effect, not be a precedent. As described by the official publication on GATT affairs,

> When the Council adopted the report it did so on the understanding that it did not foreclose future examination of the use of Section 337 to deal with patent infringement cases from the point of view of consistency with Article III and XX of the General Agreement. GATT Activities in 1984, at 44-45 (1984).

Based upon the foregoing, if a vote were held in the Council today, it appears likely that Section 337, as it now stands, may be considered inconsistent with the GATT, given the positions of the Council members on their first consideration and their acquiescence in the report only when it was rendered meaningless as a precedent.

D. National Treatment

If Section 337 is not exempted under Article XX(d) (GATT) as necessary to the protection of U.S. intellectual

property rights, then consideration of national treatment obligations would occur. The GATT's National Treatment clause prohibits application to imported products laws and regulations which are less favorable than those applied to domestic products. Thus, because of the greater difficulties that would be encountered by foreign parties in Section 337 proceedings than in federal district court proceedings, a violation of the National Treatment clause would arise.

Many of thoses who rely inappropriately on the GATT panel report in Spring Assemblies also assert that even if the Article XX(d) exemption were not available, there is nothing inconsistent within the operation of Section 337 and with the requirement under Article III of the GATT for "national treatment." The Association believes there is at least serious doubt as to the correctness of this assertion, and certainly many of our major trading partners do not agree with this proposition.

Those who argue that Section 337 provides no less favorable treatment to imports assert that the injury test is irrelevant, yet extensively cite the injury requirement as demonstrating that Section 337 is no less favorable because the injury test must be met. It is difficult to reconcile all the attention given to the injury test in light of this assertion of irrelevancy. Indeed it is clear that the injury test is relevant and that its removal would weaken substantially any defense of Section 337 while irrevocably destroying any "Grandfather" rights.

E. Equal Treatment Under The Intellectual Property Laws

Proponents of the amendment have developed questionable arguments to overcome the obvious differences between Section 337 actions and actions in the federal courts. U.S. district court actions are the only actions which U.S. manufactured products must face. Proponents speciously argue that to the extent there are any differences between Section 337 actions and district court actions, such differences operate to the advantage of foreign interests. A quick consideration of some basic differences demonstrates the lack of credibility such arguments should be accorded:

1. It has been asserted that the one year deadline which exists under Section 337 for completion of an action (federal court actions against U.S. products have no such deadline) operates as an advantage to importers, especially importers not infringing. This, of course, assumes that an importer will be able to prove in one year (actually, the evidence taking must be concluded within seven (7) months) that a patent, for instance, is either invalid or not infringed. In fact,

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the deadline most often operates in favor of the U.S. complainant, which before the time limit begins can completely prepare its case while respondents are burdened with discovery and motions during much of the seven (7) month period.

2. While importers can be subject to actions in two different systems (one under Section 337 and the other in the federal courts), domestic producers are subject only to actions in the federal courts. Some argue that this does not represent less favorable treatment because a domestic party may be involved in more than one federal court action. This overlooks the fact that an importer is subject to litigation in a forum in which a domestic party is never subject to litigation. It is further argued that any financial burden on an importer due to multiple actions is offset by the heavy financial burden on the party bringing suit. The argument ignores the fact that the party bringing suit can control its costs by deciding whether to bring action in multiple fora; the importer does not have this luxury. In fact, many litigated cases under Section 337 also involve concurrent federal court litigation.

3. Proponents of the amendments have also argued that there is no unequal treatment of imports because there are "safeguards" which prevent Section 337 from being used as an harrassment. Among the safeguards asserted are motions to dismiss in the federal courts. Of course, such a motion in a Section 337 action will be successful in all likelihood only if the underlying federal court action can also be dismissed, so as such it does not operate to prevent multiple litigation. This will particularly be the case with the removal of the injury criterion, which has operated as a separate basis for a motion to dismiss a Section 337 action. (In fact, a motion to dismiss an entire Section 337 case on the basis of no injury has never been granted.) Further, perhaps the best response to harrassment, a counterclaim, is simply not available in Section 337 actions.

4. While proponents admit that the rules of evidence differ between Section 337 investigations and federal court cases, they assert that the differences are not significant. This is a highly questionable assertion. Under Section 337 administrative proceedings, hearsay evidence is admissible, while it is not under federal court rules, except for instances in which its use is limited.

5. Proponents who assert that Section 337 is not discriminatory against imports claim that it operates more as an advantage to a foreign respondent than a disadvantage since a determination by the Commission under Section 337 on patent validity and infringement is not binding on the federal courts. It is doubtful that following affirmance of the validity of an intellectual property right by the CAFC based upon a Section 337 record that it would reach an opposite finding upon later review of a district court finding regarding the same intellectual property right.

Further, an assertion that U.S. intellectual property holders are reluctant to bring a federal court action when Section 337 relief has not been granted is without foundation. Many Section 337 actions involve concurrent federal court litigation initiated in most cases by the complainant in the Section 337 action.

6. Finally, it is asserted that the remedy available under Section 337, a general exclusion order, applying to persons not even before the Commission, which is admittedly unavailable in the district courts, is not unequal treatment because it applies only to goods which the Customs Service determines to be infringing, and an advisory opinion is available from the ITC. This argument ignores the fact that the effect of the exclusion order is to shift the burden of proof to all persons wishing to import a product which may be covered by an outstanding order, including persons never before the ITC. While in the federal courts a plaintiff would have the burden of proving infringement against each party against whom it wanted relief; however, under a Section 337 exclusion order, the importer has the burden of showing he does not infringe.

F. Conclusion

The Association opposes the provisions of the bills which would eliminate the injury requirements in patent, trademark, copyright, trade secret and maskwork cases. The risk of likely negative impacts of the amendment far outweigh gains from it, if any, particularly since the statute works well now.

III. PROCESS PATENTS, Section 337a

The Association supports the current parity that exists between process and product patents as embodied in Section 337a and Section 337. However, the Association cannot support the provisions of the bills relating to process patents because, as currently drafted, the bills do not clearly maintain that parity.

While the bills are not intended to change the process patent protection of Section 337a, the language of proposed § 1337(a)(2)(B) may well change this important right.

Presently, Section 337a gives the product of a process performed outside the United States, which if performed in the United States would infringe a United States process patent, the same status for purposes of Section 337 as a product that is covered by the claims of a United States patent. That section is necessary because the U.S. patent laws, as they now exist, do not provide coverage to holders of U.S. process patents when such processes are used abroad. Practice of a process abroad cannot constitute patent infringement, nor can importation or use in the U.S. of a product made by a process abroad constitute a violation of U.S. patent laws. Thus, Section 337a provides a process patent holder with protection otherwise unavailable under the patent laws. However, there is legislation pending to amend the patent laws to fill this void, namely S.1543 and H.R. 1069. Until such legislation is enacted, however, it is incorrect to amend Section 337 by using the term "infringe" or "covered by a patent." As such, use of this incorrect terminology does not provide adequate coverage to the process patent holder.

The language of Section (a)(2)(B) of the bills is not only different from Section 337a, but is also ambiguous. Since infringement of a United States patent currently covers only acts in the United States (assuming that the Mathias bill S.1543 or the Moorhead bill H.R.1069 have not been enacted), it is inaccurate to refer to foreign acts as "covered by" a U.S. patent. To avoid this problem, Section 337a refers to these foreign acts as "covered by the claims of" a U.S. patent. The bills, on the other hand, uses the terms "covered by a" patent in subsection (i) and "would infringe" in subsection (ii). It could be argued that the choice of different language was intentional, and therefore the drafters intended a different effect. If it is deemed necessary to include Section 1337a in the bills, to avoid any ambiguity, subsection (B) should be amended as follows:

> (B) Unauthorized importations of an article made, processed, or mined under or by means of a process covered by the claims of a valid United States patent.

IV. TEMPORARY EXCLUSION ORDERS

The bills would amend the temporary exclusion order ("TEO") provision in two respects: (1) the ITC would be required to make a determination within 90 days after the date of the filing of a petition for a TEO; and (2) the ITC would have the

option of requiring the petitioner to post a bond as a prerequisite to the issuance of a TEO. While the intent of the bills is to provide more effective relief for complainants, as the comments below show, this intent will not be effectuated. Thus, while the Association supports the thrust of the bills in that they would impose time limits for ITC determinations regarding temporary relief, the Association believes that the 90-day time frame proposed is too short.

The 90-day deadline from date of filing would prove unworkable for several procedural and practical reasons. While there has been some lowering of the high standard for issuance of preliminary injunctions in patent cases, a complainant would rarely have sufficient time to meet that burden in 90 days. Discovery is also generally needed for a showing of infringement, and 90 days would be too short a period to obtain the necessary discovery. The short time period would also work a substantial hardship on respondents, as respondents would be unable to prepare a defense to validity and infringement in such a short period of time. Consideration should be given to lengthening the time period, at least for patent cases.

Moreover, it should be recognized that a Section 337 investigation is a multi-tiered process. The Commissioners must first vote to institute an investigation. Following that, an administrative law judge reaches an initial determination. Then, the case goes back to the Commissioners for a final decision. These procedures make a 90-day time limit virtually unworkable.

Trademark and copyright cases are more amenable to a fair resolution in a short time period, provided appropriate procedures are implemented. One possibility is to have the ITC handle preliminary relief for trademark and copyright cases in the same manner as do district courts.

V. DEFAULT PROVISION OF H.R. 3776

The Association favors the addition of the new subsection "(h) Default" to 19 U.S.C. 1337, as proposed in H.R. 3776. The new subsection allows the ITC to presume the facts alleged in the complaint, without a further showing of *prima facie* evidence, for the purpose of issuing relief limited to a defaulting party and upon consideration of the public interest.

Addition of this provision would change the ITC's current practice, set forth at 19 C.F.R. § 210.25, which requires the complainant to establish a *prima facie* case of violation of the statute to obtain a remedy against a defaulting party. This subsection would deter respondents from making a decision to default in the hope that complainant will not obtain sufficient evidence from other sources and be denied relief. The new

subsection would make it easier for the complainant to obtain a remedy when there are defaulting respondents, but at the same time protect participating respondents against an all-inclusive exclusion order absent establishment of a prima facie case.

The Association presumes that a limited exclusion order, which would be based upon the facts set forth in the complaint, would be unnecessary if the complainant were able to make a prima facie showing of violation sufficient to justify issuance of a general exclusion order.

VI. ADVISORY OPINIONS

H.R. 3776, at section (b)(15), would add to the present subsection (h) (redesignated as (j) in H.R. 3776) of 19 U.S.C. § 1337 a new paragraph which deals with the circumstances under which parties previously found to be in violation of Section 337 may petition the ITC for a determination that they are no longer in violation of the section (hereinafter an "advisory opinion") or for the modification or rescission of an order entered by the ITC. The new language states that the burden of proof in any such proceeding is upon the petitioner and that relief may be granted by the ITC only on the basis of "new evidence or evidence that could not have been presented at the prior proceeding."

The Association endorses that portion of the amendment (proposed subsection (j)(2)(A)) which places the burden of proof upon the petitioner seeking an advisory opinion or a modification or rescission of an existing order. However, as discussed below, establishing by legislation the standards as to what evidence may be considered by the ITC in connection with such a petition is fraught with problems. Therefore, the Association opposes proposed section (j)(2)(B) of H.R. 3776.

To the extent it reflects the current law, the amendment is salutary. However, by adding the provision that the ITC in connection with such a petition can consider only "new evidence or evidence that could not have been presented at the prior proceeding," the legislation opens up the possibility of a plethora of litigation over what is or is not "new evidence or evidence that could not have been presented at the prior proceeding."

First, a petition for an advisory opinion as to whether certain activities on the part of the petitioner will not be violative of an existing order or a petition requesting modification or rescission of an order will, in almost every instance, be a totally new proceeding in which the issues are different from those before the ITC in the prior Section 337 proceeding. However, it is entirely possible that evidence presented to the ITC in the prior Section 337 proceeding may be

relevant for wholly different purposes in the later petition proceeding.

Next, the question arises as to what is the meaning of the words "evidence which could not have been presented at the prior proceeding." Does it mean that it did not exist? Does it mean that it could not have been presented because it was irrelevant to the issues before the ITC in that proceeding? If it could have been presented in the prior proceeding but is now being used on different issues from those in the prior proceeding, is its use now barred? Any proposed legislation which raises so many questions as to its meaning is best eliminated if it has little to commend it.

The question of what evidence can be used to enable the petitioner to carry its burden when seeking an advisory opinion or rescission or modification of an existing order should be developed on a case-by-case basis by the ITC and should not be legislated by Congress. Accordingly, the Association does not endorse that portion of the proposed amendment which legislates what evidence may be considered by the ITC in connection with a petition for an advisory opinion or modification or rescission of an existing order.

VII. FORFEITURE

H.R. 3776 would add a subsection (g) to 19 U.S.C. § 1337 to make available to the ITC the remedy of seizure and forfeiture. The remedy of seizure and forfeiture would be enforced by the Secretary of the Treasury, presumably by the Customs Service.

The Association opposes the forfeiture provisions of H.R. 3776. They are objectionable for trade policy reasons, as well as for their questionable value for copyrights and trademarks in light of the existing seizure and forfeiture authority of Customs, and for their drastic effect in connection with patent infringement. The forfeiture proposal, if enacted, would be targeted by U.S. trading partners as an unnecessary penalty for patent infringement which treats imports differently from domestic products which infringe patent rights. The remedy of forfeiture is not currently available in domestic patent infringement cases. Under the forfeiture provision, an importer would not only be enjoined from producing and selling in the U.S., but would be further punished by having his goods destroyed. This would amount to an extraterritorial application of the U.S. patent laws expanding them far beyond their intended scope. Its use would lead to demands for retaliation and compensation as being inconsistent with the GATT, and no "Grandfather" rights under Section 337 would be available as a defense. It would probably result in the President denying

Section 337 relief in some cases. This would increase uncertainty of relief under the statute, and possibly result in less use of Section 337.

The remedy of seizure and forfeiture is presently available under the Customs regulations for trademark and tradename violations, and for copyright violations. See 19 C.F.R. § 133.52.

The Customs law also specifically sets forth at 19 U.S.C. § 1526 provisions for the treatment of goods which are in violation of the trademark laws.

The Customs regulations provide a number of different mechanisms for the treatment of goods subject to seizure and forfeiture, including, depending on particular circumstances, sale, destruction, and gift to charity. See, generally, 19 C.F.R. Part 162. The Customs regulations also provide, under certain circumstances, for the exportation, or in lieu of exportation, destruction of prohibited merchandise. See 19 C.F.R. §§ 18.25-18.27 and 158.41-158.45.

The Customs regulations also provide for petitions for relief from forfeiture for violation of the trademark or copyright laws (19 C.F.R. § 133.51) and have general provisions for relief from forfeiture. See generally, 19 C.F.R. Part 171. Goods which have been imported in violation of the law may be seized and forfeited under 18 U.S.C. § 545. The statute of limitations for action under 18 U.S.C. § 545 is 5 years.

In summary, the Association opposes the forfeiture provisions of the bill for the following reasons:

1) The "forfeiture" provision of proposed subsection (g) does not specify how the goods which are seized and forfeited are to be disposed. Other laws which have seizure and forfeiture provisions, e.g., copyright and trademark laws, specifically provide for the nature of the disposal.

2) Subsection (g) does not clearly identify the goods which could be subject to its provisions. A literal reading of subsection (g) appears to make it applicable to goods which have been imported before the ITC has found a violation of Section 337, or even to goods which were imported before the bringing of the complaint.

3) In view of the existing seizure and forfeiture provisions of Customs and 18 U.S.C. § 545 for trademarks and copyrights, subsection (g) would appear to be redundant and not to provide any meaningful new relief. With respect to patents, forfeiture would provide a draconian measure not available in domestic patent infringement cases.

The Association would be pleased to provide any additional information which may be requested.

Executive Committee
ITC Trial Lawyers Association

Mr. JENKINS. Thank you very much. Our next witness, Mr. Donald Dinan.

STATEMENT OF DONALD R. DINAN, ESQ., ADDUCI, DINAN & MASTRIANI, WASHINGTON, DC

Mr. DINAN. Good afternoon, Mr. Chairman, my name is Donald Dinan, I am a member of the law firm of Adduci, Dinan & Mastriani. I want to thank the committee for the opportunity today to testify on proposed revisions to section 337. I will be directing my remarks solely, however, to the industry issue of the statute and proposed changes to the domestic industry requirement.

First, I want to say that I support the inclusion of the domestic industry requirement within section 337. However, I believe that the way that the domestic industry clause is currently being utilized within the current language of the statute leaves much to be desired in that it is not effectively protecting intellectual property rights of bona fide U.S. industries.

We have had the situation where U.S. industries have been denied relief, although they have proven an unfair act and have proven that this unfair act has had substantial injury on industry within the United States. They have been denied relief because they have been deemed not to be a domestic industry as defined by the statute.

Perhaps the most glaring example of this is in the case of *Certain Miniature Battery-Operated All-Terrain Wheeled Vehicles*, better known as the *Toy Vehicles* case, where the Commission denied relief after finding patent infringement and substantial injury because there was no domestic injury. It was publicly recorded in the press that upon this decision 125 workers in Minneapolis, MN, lost their jobs.

There are basically three problems with the domestic injury clauses that now exist. First, it does not provide adequate protection to nonmanufacturing activities of the U.S. industries; two, it does not include within its ambit the second-generation items produced under a patent; and three, the efficient, economically operated clause within it.

As concerns the first problem, the Commission had traditionally viewed domestic industry as that requiring manufacturing activities. This was codified in the case of *Certain Ultra Microtone Freezing Attachments*, a 1976 case. However, as the statute evolved and as concepts concerning international trade evolved, the Commission in the *Landmark Stoves* case, cast iron stoves, expanded the ambit of section 337 to include a service industry. The Commission, in its decision, viewed whether the industry employed the use of American land, labor, and capital for the creation of value. However, the Commission did not specifically adopt that as a legal test.

Subsequently, however, in numerous cases the deficiency of the current industry clause within the statute has been shown. The Commission, in the next major case which had to do with the certain limited-charge cell culture microcarriers, the *Microcarrier* case, adopted the standard of the nature and significance of the activity within the United States to determine if there was a domes-

tic industry under the statute. This led to certain anomalous results.

In the *Microcarrier* case and also in *Modular Structural Systems,* relief was again denied because the actual product covered by the patent was manufactured abroad. However, within the United States there were large employment and use of U.S. capital and facilities engaged in the engineering, the marketing, the advertising, the research, the development, and the distribution as well as all administrative functions.

The statute should not be so interpreted as to deny these bona fide American industries protection under the statute and to encourage patent infringement and trademark infringement because one component, one element, of the actual product is manufactured abroad.

The inadequacy of the domestic industry clause in the current statute to protect American industry from foreign, illegal and unfair competition became blatantly clear in the Commission's recently ruling in *Certain Products With Gremlins Character Depictions,* the *Gremlins* case. This ruling was in March 1986. In this case, the Commission reversed the initial determination of the administrative law judge and found that complainant's activities in the United States did not constitute a domestic industry under section 337. In the case, Warner Brothers proved copyright infringement and proved substantial injury in the United States. However, since the vast majority of the products that contained the Gremlins character depiction were being manufactured outside the United States, Warner Brothers was ruled not to be a domestic industry; this despite the fact that Warner Brothers engaged in extensive activities within the United States for the creation of the character, the advertising, the research, the development, the marketing, the sales, and the license—the administrative licensing facilities. All of which employed large numbers of persons and utilized large amounts of American capital.

It is respectfully submitted that there is a deficiency in the statute where significant economic activities involving large numbers of Americans and American capital are ruled not to be a domestic industry under section 337, thus allowing adjudicated unfair acts and unfair methods of competition which are causing substantial injury to go unpunished. Through this loophole, illegal behavior on the part of the importers, to the detriment of the U.S. economy, is actually being encouraged.

The second problem with the domestic industry clause as it now exists is the issue of later generation articles. It is very common that for any patented device, American industry makes improvements. Of course, if you have an improvement on a product, by definition, it is different, since it is not the exact product that was covered by the claims of the patent.

Since the Commission and its supervisory court, the court of appeals for the Federal circuit, have ruled that the industry in a patent case is defined by the claims of the patent, this has led to a situation where there is an artificial analysis utilizing the doctrine of equivalence under title 35 to see if the "domestic industry" is infringing its own patent. The doctrine of equivalence was never intended to be applied for this type of analysis.

This creates the anomalous result that an American company has a patent, is producing under this patent a later generation product, the patent has been knocked off by foreign competitors and is being sold in direction competition to that American company's product, yet that company is denied import protection under section 337. This is no idle concern; it happened in *Certain Minutiae-Based Automatic Fingerprint Identification Systems* and in *Certain Spherical Roller Bearings*. Both American companies were denied relief.

Finally, I believe the economically and efficiently operated clause should be removed. The Commission has never found an industry not efficiently operated. It's only used by respondents to harass complainants and drive up the cost through discovery abuse.

To conclude, Mr. Chairman, I would propose the statute be amended in the following manner, that would eliminate these three problems, and that would be by striking out the efficiently and economically operated clause in the statute, and by adding at the end of section 337(a), the sentence, "For the purposes of this section, an industry in the United States includes significant investment in plant and equipment, significant employment of labor or capital, or significant activity related to the exploitation of the U.S. patent, copyright or trademark, including engineering, research, development, licensing, marketing, and sales."

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

TESTIMONY OF
DONALD R. DINAN

Good morning, Mr. Chairman, Members of the Committee. My name is Donald R. Dinan and I am appearing today in my personal capacity. While presently in private practice, I was the Acting Director of the Unfair Imports Investigation Division of the U.S. International Trade Commission which is the office within the Commission which administers Section 337. I want to thank the Committee for the opportunity to testify today on proposed revisions to Section 337 contained within the draft version of the Omnibus Trade Legislation. I will, however, be directing my remarks solely to the "industry" issue of the statute and will recommend a proposed amendment to the industry clause of Section 337.

I. The Perceived Problems

Section 337 presently requires that the unfair act or the unfair method of competition have a prescribed statutory effect on "an industry, efficiently and economically operated in the United States." 19 U.S.C.A. 1337(a). This is known as the domestic industry clause of the statute. There has been, however, certain dissatisfaction in the way this clause has operated which has led to the undesirable result that U.S. industries have proved an unfair act which has caused substantial injury yet have not received relief because they have not been deemed to be a domestic industry as defined by the statute. Perhaps the most glaring example of this is Certain Miniature Battery-Operated All Terrain Wheel Vehicles (the Toy Vehicles case), Inv. No. 337-TA-122, (1982) in which the Commission denied relief based on a finding of no domestic industry. It was

publicly reported in the press that upon this Commission decision, 125 people in Minneapolis, Minnesota, lost their jobs because the complainant, Schaper Manufacturing Co., could not compete against the adjudged illegal foreign competition.

The areas of concern over the industry clause fall into three basic categories.

1. The extension of protection of Section 337 to U.S. industries engaged in non-manufacturing activities;

2. The extension of Section 337 to U.S. industries which own a valid U.S. patent but which are producing a later generation of the patented article; and

3. The efficiently and economically operated clause of Section 337.

II. Protection of U.S. Industries Engaged in Non-Manufacturing Activities

The Commission traditionally viewed the domestic industry clause as referring to manufacturing activities, at least insofar as the case was patent based. See Certain Ultra Microtone Freezing Attachments, Inv. No. 337-TA-10 (1976). However, with the evolution of the statute caused by the amendments to Section 337 contained in the Trade Act of 1974, Public Law 90-618, 93rd Cong., H.R. 10710, January 3, 1975, the Commission expanded the coverage of the statute to include "service industries" in the landmark Stoves case, Certain Cast-Iron Stoves, Inv. No. 337-TA-69 (1981). The Commission in dicta in that case endorsed the test for domestic industry proposed by the Commission Investigative Staff of "any systematic activity which

significantly employs use of American land, labor and capital for the creation of value." Id. at 10. In making its decision, the Commission drew on the legislative history of not only the Trade Act of 1974 but also the Tariff Act of 1930 and the Tariff Act of 1922. See Trade Reform Act of 1974: Report on the Committee on Finance, S. Rept. No. 93-1298 (93rd Cong., 2d Sess.) 1974 at 197; 71 Cong. Rec. 3542; 62 Cong. Rec. 12507. The Stoves case was largely greeted with approval as a significant extension of protection of Section 337 to protect American industries from illegal foreign competition.

However, the Stoves case was soon followed by the Toy Vehicle case. In that case, the Commission ruled that the engineering and licensing functions of the U.S. companies, as well as the quality control programs, packaging, advertising, and marketing activities of the U.S. companies did not constitute an industry in the United States under Section 337. In reaching this determination, the Commission adopted the "nature and significance of the business activities of Complainant in the United States" as the test to determine whether there was a domestic industry under the statute. Certain Miniature Battery-Operated Toy Vehicles, supra at 10-11. This decision was upheld by the Court of Appeals for the Federal Circuit in Schaper Manufacturing Co. v. U.S. International Trade Commission, 717 Fed.2d 1368 (Fed. Cir. 1983). The Court of Appeals in its decision appeared to be largely deferring to the Commission's expertise and judgment in determining whether a domestic industry existed. Id. at 1370.

The Commission further declined to find a domestic industry under Section 337 in Certain Limited-Charge Cell Culture Microcarriers, Inv. No. 337-TA-129, (1984), and in Certain Modular Structural Systems, Inv. No. 337-TA-164, (1984), overruling the Initial Determination of the Administrative Law Judge and the recommendation of the Commission Investigate Staff. In both cases, the issue was that the actual article covered by the claims of the patent in issue was manufactured abroad. The Commission ruled that all the other activities engaged in by the U.S. company which were associated with the manufacturing, marketing and sale of the product, including engineering, design, quality control, advertising, marketing, sales and administrative and managerial activities, did not meet the Commission's "nature and significance" test for a domestic industry even though all these activities occurred in the United States. The Modular Structural Systems case seems particularly anomalous in that the article in question had no other practical commercial purpose but to be included in the modular structural system, 98 percent of which was manufactured in the United States. The Commission found that the patented article was "a separate article of commerce".

The inadequacy of the domestic industry clause in the current statute to protect American industry from foreign illegal and unfair competition became blatantly clear in the Commission's recent ruling in Certain Products with Gremlins Character Depictions, Inv. No. 337-TA-201 (March 1986), in which the Commission reversed the Initial Determination of the

Administrative Law Judge and the recommendation of the Commission Investigative Staff and found that complainant's activities in the United States did not constitute a domestic industry under Section 337. In that case, Warner Brothers, Inc. alleged copyright infringement based on the importation of various foreign products with the "gremlins" character depictions into the United States. Although the Commission found copyright infringement which had the tendency to substantially injure Warner Brothers, the Commission denied relief on the grounds that Warner Brothers' activities did not constitute a domestic industry. Most of Warner Brothers' copyrighted articles were manufactured abroad. Warners Brothers, however, conducted extensive activities in the United States concerned with the marketing, sales, advertising, administrative and financial matters associated with the licensing and sale of copyrighted articles. Although these activities employed a large number of persons in the United States, and represented the investment of a great deal of capital, the Commission ruled that this licensing activity did not constitute a domestic industry under its nature and significance test. Significantly, the Commission expressly repudiated the Stoves test of "land, labor and capital devoted to creation of value in the United States". Id. at 7-8.

It is respectfully submitted that it is a deficiency in the statute where significant economic activities, employing large numbers of Americans and American capital, are ruled not to be a domestic industry under Section 337, thus allowing unfair acts and unfair methods of competition which are causing substantial

injury to go unpunished. Through this loophole, illegal behavior on the part of importers to the detriment of the United States economy, is actually being encouraged and aided and abetted.

This situation is particularly grievous in that it appears the Commission is retracting from its earlier decisions that gave protection to non-manufacturing industries in the United States. e.g., Stoves, supra; Coin-Operated Audiovisual Games and Components Thereof, Inv. No. 337-TA-105, (1982); and Certain Cube Puzzles, Inv. No. 337-TA-112, (1983). Indeed, these cases appear to be the exception rather than the rule especially with the Commission just recently repudiating the Stoves test. It is submitted that it is not in the interest of American industry to allow illegal activities to exist which cost American jobs and loss of American capital because of what only can be described at a hyper-technicality. The domestic industry clause as it is being interpreted is in total disregard of actual commercial activities and the realities of the marketplace. This has led to the absurd result that no domestic industry is found to exist under the statute whereupon hundreds of Americans lose their jobs and American companies lose sales and profits in the millions of dollars, all due to illegal foreign competition.

For this reason, it is respectfully submitted that the industry clause of the statute should be amended to correct this very serious problem.

III. Like and Directly Competitive Products - Later Generation Articles

The second concern over the domestic industry clause of Section 337 relates to the issue of later generation devices developed under a United States patent. American industry is always refining and improving its products, particularly those covered by patents. This is necessary to remain competitive in the ever changing world markets, particularly as relates to high technology goods of the type for which patents are obtained. By definition, any change to a product which is covered by a patent removes that product from the literal coverage of the patent claims, because obviously the improved product is somewhat different from the product which was patented. Both the Commission and the Court of Appeals for the Federal Circuit have ruled consistently that the domestic industry clause of Section 337 extends only to articles which come within the claims of the patent relied on. See Schaper Manufacturing Company v. U.S. International Trade Commission, supra; Certain Molded-In Sandwich Panel Inserts and Methods for Their Installation, Inv. No. 337-TA-99 (1982).

This has led to the anomalous result that a foreign manufacturer can be infringing a valid U.S. patent and selling that infringing product in direct competition with the patent holders product and yet not be found in violation of Section 337 because the patent holder's product has been improved so that it does not directly fall under the claims of the patent. This creates a tremendous loophole in the statute which actually encourages foreign manufacturers to "knock off" United States

products by copying the product as described by the patent and producing an earlier generation device. This product is highly marketable because it can be sold cheaper, and because not everyone needs state-of-the-art equipment, particularly if the price differential is great enough. This practice has a particularly pernicious effect on the United States economy in that it not only harms the particular industry involved but adversely affects the economy as a whole because it discourages technological development and displaces high technology in the marketplace with a lower technology.

This is no idle concern. The U.S. patent holders have lost their Section 337 case specifically on this ground. See, Certain Minutiae-Based Automated Fingerprint Identification Systems, Inv. No. 337-TA-156 (1983); Certain Spherical Roller Bearings and Components Thereof, Inv. No. 337-TA-179 (1984). Section 337 should be amended to eliminate this pernicious loophole.

IV. Economic and Efficiently Operated

The efficient and economically operated portion of the domestic industry clause of Section 337 should be eliminated. The Commission has never found a U.S. industry not efficiently and economically operated. The phrase has largely lost any substantive meaning. All that the phrase does is to allow foreign respondents to engage in extensive discovery abuse against complainants at tremendous cost. This is because the Commission essentially follows the Federal Rules of Civil Procedure standard concerning relevant discovery: "the information sought appears reasonably calculated to lead to the

discovery of admissible evidence." See F.R.C.P. 26. As concerns the efficient operation of an industry, practically every document ever generated by the domestic industry is relevant under this standard. This discovery abuse is particularly pernicious when the foreign infringer is much larger in economic size than the domestic concern. Because this phrase of the statute has lost any sense or meaning and is only used for discovery abuse to harass domestic companies, it should be eliminated.

V. Proposed Statutory Change

The following is the proposed statutory change to remedy the statutory deficiencies with the domestic industry clause discussed above.

UNFAIR METHODS OF COMPETITION.--Subsection (a) of section 337 (19 U.S.C. 1337) is amended--

(1) by striking out "(a) Unfair" and inserting in lieu thereof "(a)(1) Unfair";

(2) by striking out "efficiently and economically operated";

(3) by adding at the end of the following:

"For purposes of this section, an 'industry in the United States' includes significant investment in plant and equipment; significant employment of labor or capital; or significant activity related to the exploitation of a United States patent, copyright, or trademark including engineering, research and development, licensing, marketing, and sales."

The conformed language of section 337(a) would now be:

Section 337. Unfair Practices in Import Trade.

(a) (1) Unfair Methods of Competition Declared Unlawful.--Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are declared unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provisions of law, as provided in this section. For purposes of this section, an "industry in the United States" includes significant investment in plant and equipment; significant employment of labor or capital; or significant activity related to the exploitation of a United States patent, copyright, or trademark including engineering, research and development, licensing, marketing, and sales.

(2) [amendment on injury presumption for intellectual property rights]

Note: This proposed change does not address the issue of altering the injury requirement in subsection (a)(1) through the addition of the words "impair or prevent," or "be a threat thereof.

It is submitted that in the legislative history of these amendments that it be specifically set forth that the phrase "related to the exploitation of" means that later generation products developed pursuant to a United States patent comprise a domestic industry even though the new product may not be directly covered by the claims of the patent. Further, it is submitted that the legislative history should make it clear that the list of activities at the end of subsection(a)(1) of section 337, "engineering. . .sales," is by way of enumeration and not limitation. The legislative history could expand on the types of activities the Commission should consider as comprising a domestic industry.

It is believed that this proposed amendment to the industry clause of section 337 will remedy very real shortcomings in the present statute, and will greatly strengthen the law in protecting United States intellectual property rights from unfair foreign competition.

I thank you very much for this opportunity to testify before the Committee.

Mr. JENKINS. Thank you for your testimony.

I know each of your statements contain some very technical arguments that I am sure the members will have to go through page by page, but let me ask a couple of questions.

Mr. Stein, it is my understanding that Representative Kastenmeier introduced a trade bill yesterday. Is it your opinion that the provisions in his bill that establishes a rebuttable presumption of injury standard is sufficient?

Mr. STEIN. Mr. Chairman, that bill would not solve the major problems that are facing section 337 today, and that are addressed in the discussion draft before this subcommittee. Particularly rebuttable presumption merely shifts the burden of going forward with evidence. It doesn't really change the need to adjudicate an issue, or the standards under which the issue is adjudicated.

The problem with the ITC's injury test has been twofold:

One, I think it is fair to say that the results have been less than uniform. There have been a number of instances of injustices; industries that have been victimized by piracy have not gotten relief because of the injury requirement.

The Ways and Means Committee discussion draft would fix that.

The second problem is even in those cases where injury is more or less a foregone conclusion it still must be litigated at great expense. As Mr. Plaia testified, it's the view of the ITC Trial Lawyers Association that in fact injury generally is a foregone conclusion, and is rarely a problem in these cases. It certainly is a problem to domestic industries who have to spend a tremendous amount of money and effort in proving their injury cases.

I spent 7 years as a general counsel of the ITC, and during that period of time I was appalled by the cost of section 337 proceedings, and by the fact that in case after case where in fact the injury issue may have been a foregone conclusion, nonetheless there was extensive discovery, there was a tremendous amount of time and effort taken at trial, and the waste of resources, both in the private sector and in the government, was very substantial.

I would suggest that this committee stand firm in eliminating the injury test, rather than going with the notion of a rebuttable presumption, which really won't change the issues in any litigated case. The presumption simply falls away.

Mr. JENKINS. Mr. Plaia, I will give you an opportunity to respond. Let me ask you, I have followed your testimony. Are you not contending that we have any obligation under GATT to permit importers to violate intellectual property rights?

Mr. PLAIA. No, I'm not, Mr. Chairman. That's not our position. We certainly agree with the notion that intellectual property rights of U.S. companies should be highly protected and vigorously protected. And I think the record of section 337 is that it's been an effective tool since the amendments of 1974 in doing so.

But certainly our GATT position is not based on that proposition.

Mr. JENKINS. The administration is supporting this particular change. Do you think they would be supporting that if they thought it was a violation of GATT?

Mr. PLAIA. I can't explain why the administration is or is not supporting it. I can only tell you what our belief is as an association. We believe that it would throw the statute into question. We

are concerned about losing the grandfather status which the statute presently enjoys.

Back in 1974 when the amendments were passed, which really activated the statute at that time, there was concern at that time and, indeed, the substance of the statute remained the same. The statute is older than GATT; therefore, it enjoys this grandfather position.

However, if the substance were changed in the statute, I do not believe that it would, and I think it would give rise to more challenges than we've received. We've received very few. And second, I think that our trading partners would want to put that on the table a little bit easier, because we couldn't fall back on a statute which has been in active status since 1922.

Mr. JENKINS. I'm sure I'm not adequately knowledgeable in this area on this particular section. But it would appear to me that if there is a violation of one's intellectual property rights, that the burden should not be upon the holder of that to establish that there has been an injury.

Why shouldn't the mere infringement of a property right give one an opportunity under this section? I don't know as I follow. Maybe I'm missing something.

Mr. FOSTER. Mr. Chairman, my name is David Foster. Let me try to respond to that.

Under U.S. domestic intellectual property law, patent law, you do not need to show injury in order to receive relief. However, under the U.S. domestic law, you must proceed party by party. You must prove your case against each individual you accuse of infringing. You must subject your patent to a validity test against each infringer.

Under section 337, it's——

Mr. JENKINS. That's in district court now that you're talking about?

Mr. FOSTER. That's in district court. Exactly, Mr. Chairman.

Under 337, it's quite a different proposition. Under section 377, you bring what's called an in rem action, where your action is against all goods that may infringe your patent.

Mr. JENKINS. This gives you an opportunity to attach something, to get some relief, because you may not have the opportunity to get relief in the district court.

Mr. FOSTER. It gives you a chance to pick out several parties to prove your infringement case and to establish the validity of your patent. And by doing that, you then get relief against the entire world, in essence. A general order can cover any importations.

The reason that people felt that this injury test was justified—at least I believe this is what, in fact, the rationale behind it was—that in order to get that extraordinary relief where you don't need to go party by party, prove your validity, prove your infringement party by party, you have to show that there is an industry that is suffering injury, and that justifies taking a broad action which would not be permitted under domestic law because it would be felt to be a denial of due process.

The reason we don't have an in rem remedy in U.S. domestic law is because the Congress wouldn't stand for that. You could not, by accusing one person of infringement, get relief against another

person in an in rem action under U.S. law. That would be considered a denial of due process; it would be considered unfair.

Internationally you could——

Mr. JENKINS. You couldn't get service on all those people anyway, could you?

Mr. FOSTER. Well, domestically you could. Domestically we could force people to go around and get service. You know, you could bring it in any district court in the United States where you can find the defendant.

But internationally we do permit that, and the justification is, if you have an industry that's being injured, then that is sufficient to allow this broad remedy. And I think that is the way it's viewed internationally. And as Chairwoman Stern of the Commission has testified, she believes—and I agree with her—that our international trading partners have not attacked 337 more vigorously than they have, because they have a perception of it as a trade statute, and they understand that if there is injury to an industry and that's demonstrated, then this relief, this in rem relief, is to some extent justified.

If you remove that, we feel that it will subject the statute to more attacks internationally. Whether those attacks will be successful or not, you know, it's a matter of judgment. The administration believe that they can defend it.

The only thing I would point out there is, in the one case that was brought, while we had a favorable panel decision, when it was discussed by the contracting parties, the European Communities, the Nordics, Canada, and Japan were ready to vote down that decision of the panel, and that was only prevented by the United States and Australia preventing that vote from occurring, and the panel decision was ultimately adopted only on the agreement that it not be precedent. And in fact, GATT left the issue wide open.

That, to me, doesn't indicated that we're in a strong position in GATT, based on the one case that has been brought, and our concern is, we don't want to expose the statute, which has worked effectively to protect intellectual property, we don't want to expose it to attacks by making an amendment which will have very little, if any, substantive effect.

Mr. JENKINS. Do the members of the ITC Trial Lawyers Association, who represent the other side, primarily the domestic industries, do they agree with you? Or does the ITC Trial Lawyers Association primarily represent importers?

Mr. FOSTER. We represent all parties.

Mr. JENKINS. I know. I'm sure you do.

Mr. FOSTER. And I think if you looked at the roster, it's probably 50-50. I represent domestic industries and respondents. Mr. Plaia represents domestic industry mainly, but he's represented a few respondents. Mr. Stein has represented domestic industries. You know, we're not coming at this from the point of view of one side or the other; we're coming at it from the point of view of an association. And of course there's disagreement in the association. This is not a unanimous view. There are some trade lawyers and some patent lawyers that say we don't need the industry test, but the bulk of the association believes that we should retain it in some form.

Mr. JENKINS. Part of the contention is that this would make it somewhat less expensive and less burdensome. Would you agree with that generally?

Mr. PLAIA. May I speak to that, Mr. Chairman?

Mr. JENKINS. Yes.

Mr. PLAIA. I have been handling section 337 cases first at the International Trade Commission as an attorney and in private practice. For the most part, I have represented myself domestic companies, but I also have represented respondents. And these are big cases. The discovery is complex and complicated, and it is costly. Everybody knows that.

However, how much would be saved by eliminating the injury itself, I'm not certain of that. The discovery in intellectual property matters includes an awful lot of the information which would be relevant to the property issues. Also if you retain the industry issue, you would have a lot of discovery in that area also.

Once you get started with discovery, it depends on how big your company is and how many documents they have and how many people they have that you could ask questions to. You might spend another hour or two or three or whatever with a certain witness if you wanted to ask him some specific questions about injury, but certainly you would ask the same witness a lot of the other questions, especially in regard to industry.

So I'm not certain how much it will control the costs. Costs in litigation are controlled by the parties, I believe.

Mr. JENKINS. Maybe that's correct. I never did practice that type of law, but sometimes the attorneys can generate a lot of questions out of those computers. You know, you just put your money in and watch those questions be pumped out.

Mr. PLAIA. Lawyers always have questions; that's true.

The second factor to consider, Mr. Chairman, is that this won't eliminate consideration of the ITC of these matters, what we call the public interest matters, which are competitive conditions in the U.S. market and so forth and so on. What it will do is take these matters off of a due process record, and it will put it into a record where you have a quasi-judicial type of hearing after the due process hearing when these materials would be considered, and certainly these are the types of things that would be considered in a White House review.

All we're saying is that we'd like to see these things developed on a due process record, because we think it's fairer for all of those involved, rather than come in afterwards and not have the same opportunities as an adversary to develop the facts.

Mr. JENKINS. Thank you. Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

I've been looking over the testimony, since I wasn't able to hear it delivered in person. And as I look it over, it appears as if on the question of eliminating the requirements in section 337 of proof of economic harm, Mr. Stein supports that; is that correct?

Mr. STEIN. Yes.

Mr. PEASE. And Mr. Witte supports that?

Mr. WITTE. Yes.

Mr. PEASE. Mr. Plaia opposes it; is that right?

Mr. PLAIA. Yes, sir.

Mr. PEASE. Mr. Dinan, do you take a position on that?

Mr. DINAN. We did not take a specific position on that.

Mr. PEASE. I see. OK, well, I guess I can find the reasons out by reading your testimony in detail. I just wanted to clear that up.

Mr. Chairman, I think that's all I have.

Mr. JENKINS. I want to thank the panel for your testimony. Thank you very much.

Mr. PEASE [presiding]. Our next witness will be from the General Accounting Office. Mr. Allan Mendelowitz is Associate Director, National Security and International Affairs Division.

STATEMENT OF ALLAN I. MENDELOWITZ, ASSOCIATE DIRECTOR, NATIONAL SECURITY AND INTERNATIONAL AFFAIRS DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY JOHN WATSON, GROUP DIRECTOR; AND JOSEPH J. NATALICCHIO, PROJECT MANAGER

Mr. MENDELOWITZ. Thank you, Mr. Chairman.

With your permission, I would like to introduce the gentlemen accompanying me this afternoon.

Mr. PEASE. Surely.

Mr. MENDELOWITZ. On my left is Mr. John Watson, a Group Director in our division, who is overseeing the work on intellectual property, and on my right is Mr. Joseph Natalicchio, who is project manager on the assignment that we will be discussing.

Also with your permission, I would be happy to read a summary statement and submit my full statement for the record.

Mr. PEASE. That's just fine. We will include your full statement in the record.

Mr. MENDELOWITZ. Thank you very much.

As I said, we're pleased to be here to discuss our recent work on ways to strengthen the protection of intellectual property rights under section 337 of the Tariff Act of 1930.

Our work began in January 1985 and shows that section 337 protection of intellectual property rights can be made more effective, and we are proposing ways to do that. Our work has been quite extensive. We have reviewed the legislative history of section 337, the ITC implementing regulations, case histories, judicial precedents, customs regulations, and numerous legal and other academic studies.

In addition, we interviewed officials involved in administering 337 proceedings, including each of the ITC Commissioners, the Administrative Law Judges, and representatives of the ITC's Office of Unfair Import Investigations and the Office of the General Counsel. We interviewed Customs Service officials at their headquarters and at the Regional Office in Chicago and a number of attorneys representing both complainants and respondents in section 337 proceedings.

In addition, we conducted a survey questionnaire of all firms that have initiated section 337 proceedings to protect intellectual property rights, starting January 1, 1975 and which had concluded all litigation as of April 1985.

We have a number of proposals, and I'm sure that you are familiar with some, but we would like to take note of the fact that on

the major issues under consideration for section 337, we agree with some of the proposals that have been put forward, and we have modifications to others which, based on our discussions with representatives of complainants and respondents, we believe represent proposals that would be both fair to all parties concerned and protect the public interest.

We agree that use of the economic tests in section 337 litigations involving protection of intellectual property is not appropriate. Because of these tests, some firms seeking to protect the U.S. intellectual property rights from counterfeit and infringing imports have been denied access to section 337 relief.

We are proposing that section 337 be amended for cases involving protection of intellectual property by, one, eliminating the efficient economic operation and domestic industry requirements and, two, redefining the injury test so that ownership of a valid U.S. intellectual property right and proof of infringement by imports is sufficient to meet this criterion.

Second, with respect to exclusion orders, many believe that the Commission's 7-month timeframe for issuing expedited relief is too long. Firms that have received such relief reported, in response to our survey questionnaire, that sales and consumer confidence in their products were injured during the course of the temporary relief proceedings, undermining the effectiveness of such relief.

For such cases involving protection of intellectual property rights, we are proposing that, at the request of the complainant, the Commission make temporary relief effective at the time of an administrative law judge's positive initial determination on temporary relief, with the complainant posting a bond. Using this procedure, temporary relief can be made effective in 4 months, and we believe that will still give the administrative law judges the time they need to do an adequate case development.

We are also proposing that the Commission's review of the initial determination on temporary relief be made automatic, thus bypassing the Commission's monthlong procedure for determining whether to review an initial determination.

With respect to default proceedings, the Commission generally takes 12 months to conclude section 337 proceedings when no respondents participate—in other words, a default proceeding. Firms that have participated in default proceedings reported, in responses to our survey questionnaire, that sales and consumer confidence in their products were injured during the course of these proceedings, undermining the effectiveness of the relief.

For cases involving—with your permission, if I can go on for about another 2 minutes, I think I can complete the summary.

Mr. PEASE. Just ignore the light. That's all right.

Mr. MENDELOWITZ. Thank you.

For such cases, we are proposing that for proceedings where no respondents participate, the Commission—upon request of complainants—presume the facts in the complaint and issue temporary relief if the facts so warrant. The Commission would then continue with its present default proceedings, which would have to be concluded within 6 months. If it determines that permanent relief is warranted, the Commission would replace the temporary order with the appropriate permanent relief.

During this period, a respondent—if a bond were posted—could continue to import goods into the country, on provision that if relief, in fact, becomes permanent after the 6-month period, the goods would be subject to reexportation or destruction.

With respect to the ITC authority to issue both exclusion orders and cease and desist orders, to remedy the same violation, we believe that the Commission can more effectively remedy unfair trade practices if it issues, when warranted, both exclusion orders and cease and desist orders to remedy the same violation.

However, there may be some legal question regarding whether section 337 authorizes the Commission to issue both remedies to address the same unfair trade practice. We are proposing that section 337 be amended for cases involving protection of intellectual property rights to clearly authorize the Commission to issue both exclusion orders and cease and desist orders to remedy the same violation.

And finally, with respect to Customs enforcement of exclusion orders. Because Customs cannot seize goods when enforcing exclusion orders, infringers can do what is known as port shop. That is, bring the infringing goods from one port to another until they gain entry.

Of the firms responding to our survey, that received exclusion orders, nearly two-thirds of those that had a basis to judge reported that infringing goods continued to enter the country in violation of their exclusion orders. The majority of firms reported that these goods significantly injured sales and consumer confidence in their products.

We are proposing that section 337 be amended for cases involving protection of intellectual property rights to authorize the Commission to instruct the Customs Service to seize goods of predatory infringers. That is, those who on more than one occasion bring infringing or counterfeit goods, in knowing violation of exclusion order, into the country.

We are also proposing that Customs intensify its efforts to elicit the support of firms that have obtained exclusion orders in identifying shipments containing counterfeit or infringing goods.

That completes my summary statement, and we will be happy to try to answer any questions that you may have.

[The prepared statement follows:]

SUMMARY OF STATEMENT BY

ALLAN I. MENDELOWITZ
ASSOCIATE DIRECTOR, NATIONAL SECURITY
AND INTERNATIONAL AFFAIRS DIVISION

Issue #1: Economic tests

Findings: We agree that the use of the economic tests is inappropriate in section 337 litigation involving protection of intellectual property rights.

The Commission has interpreted the economic tests broadly. Still, because of these tests, some firms seeking to protect U.S. intellectual property rights from counterfeit and infringing imports have been denied access to section 337 relief.

Proposal: We are proposing that section 337 be amended for cases involving intellectual property rights by (1) eliminating the efficient and economic operation and domestic industry requirements and (2) redefining the injury test so that ownership of a valid U.S. intellectual property right and proof of infringement by imports is sufficient to meet this criterion.

Issue #2: Temporary exclusion orders

Findings: Many see the Commission's 7-month timeframe for issuing expedited relief as excessive in light of the one-year deadline for providing permanent relief.

Firms that have received such relief reported in response to our survey that sales and consumer confidence in their products were injured during the course of the temporary relief proceedings, undermining the effectiveness of such relief.

Proposal: We are proposing that, at the request of the complainant, the Commission make temporary relief effective at the time of an administrative law judge's positive initial determination on temporary relief, with the complainant posting bond. Using this procedure, temporary relief can be made effective in 4 months. We are also proposing that the Commission's review of the initial determination on temporary relief be made automatic, thus bypassing the Commission's month-long procedure for determining whether to review an initial determination.

Issue #3: Default proceedings

Findings: The Commission generally takes 12 months to conclude section 337 proceedings when no respondents participate (i.e., default proceedings).

Firms that have participated in default proceedings reported in response to our survey that sales and consumer confidence in their products were injured during the course of these proceedings, undermining the effectiveness of section 337 relief.

Proposal: We are proposing that, in cases where no respondents participate, the Commission, upon the request of complainants, presume the facts in the complaint and issue temporary relief if the facts so warrant. The Commission would then continue with its present default proceedings, which would have to be concluded within 6 months. If it determines that permanent relief is warranted, the Commission would replace the temporary order with the appropriate permanent relief.

Issue #4: ITC authority to issue both exclusion orders and cease and desist orders to remedy the same violation

Findings: The Commission can more effectively remedy unfair trade practices if it could issue both exclusion orders and cease and desist orders to remedy the same violation.

There may be some legal question regarding whether section 337 authorizes the Commission to issue both remedies to address the same unfair trade practice.

Proposal: We are proposing that section 337 be amended to clearly authorize the Commission to issue both exclusion orders and cease and desist orders to remedy the same violation.

Issue #5: Customs enforcement of exclusion orders

Findings: Because Customs cannot seize goods when enforcing exclusion orders, infringers can "port shop," that is, bring the infringing goods from port to port until they gain entry.

Of the firms responding to our survey that received exclusion orders, nearly two-thirds of those that had a basis to judge reported that infringing goods continued to enter the country in violation of their exclusion orders. The majority of these firms reported that these goods significantly injured sales and consumer confidence in their products.

Proposal: We are proposing that section 337 be amended to authorize the Commission to instruct the Customs Service to seize goods that violate section 337 exclusion orders.

We are also proposing that Customs intensify its efforts to elicit the support of firms that have obtained exclusion orders in identifying shipments containing counterfeit or infringing goods.

STATEMENT

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss our recent work on ways to strengthen protection of intellectual property rights under section 337 of the Tariff Act of 1930. Experience since passage of the 1974 Trade Act, which strengthened section 337, shows that this provision has become an important means to stop imports of goods that counterfeit and infringe U.S. intellectual property rights. Our work, which we began in January 1985, shows that section 337 protection of intellectual property rights can be made more effective, and we are proposing ways to

--increase access to section 337 relief by eliminating or redefining certain statutory tests that must be met to obtain relief,

--improve administration of section 337 proceedings either when complainants need immediate assistance or when no respondents participate,

--clarify the International Trade Commission's authority to issue both exclusion orders and cease and desist orders to address the same unfair trade practice, and

--strengthen the Customs Service's ability to enforce exclusion orders.

These proposals are included in a draft report which is currently with the International Trade Commission, the Department of the Treasury, and the Office of the U.S. Trade Representative for review and comment.

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NEED FOR INCREASED ACCESS TO SECTION 337

Although section 337 relief has been available since the Tariff Act of 1922 (which contained the essential provisions of what was later to become section 337), firms began using it extensively only when it was amended by the Trade Act of 1974. The 1974 Trade Act transformed section 337 into what one prominent attorney has called "the best forum wherein to challenge widespread infringement of U.S. intellectual property rights." As of April 1985, approximately 95 percent of the section 337 cases initiated since passage of the 1974 Trade Act have involved protection of intellectual property rights, primarily patents.

Section 337 was originally intended as a trade statute to protect U.S. firms and workers against all types of unfair foreign trade practices. Therefore, the provision of relief is contingent on complainants' meeting certain economic tests normally not required to protect intellectual property rights. These tests require complainants to demonstrate that they (1) constitute a domestic industry, (2) are efficiently and economically operated, and (3) are substantially injured by the unfair trade practice.

The International Trade Commission has interpreted these tests broadly. The Commission has:

--Never denied relief on the grounds that the complainant

was not efficiently and economically operated.

--Interpreted domestic industry broadly; for example, the Commission has issued relief in instances where the domestic component of the industry did not involve manufacturing operations, but distribution, research and development, or sales and servicing.

--Been willing to accept small showings of injury as sufficient to meet the statute's injury requirement.

Still, because of these economic tests, some holders of U.S. intellectual property rights who seek relief from counterfeit or infringing imports are denied access to section 337 relief. Since the 1974 Trade Act amendments, 11 complainants have been unable to meet all the economic criteria and 6 of them were denied relief solely for this reason. However, these 11 cases may be only part of the story. Our survey results indicate that firms have terminated their proceedings or accepted settlement agreements which they judged not in their best interests because they could not meet all of the statute's economic tests. In addition, other firms may be discouraged from even initiating proceedings because of these tests. However, their number is not known. The cost of section 337 litigation, which, according to our survey generally ranged between $100,000 and $1 million, with a few costing as much as $2.5 million, adds to this reluctance. The legal costs attributable to satisfying the economic tests can

reportedly equal more than 50 percent of the total litigation expenses.

There is substantial support for eliminating the requirement that the complainant demonstrate that it is efficiently and economically operated. However, objections have been raised to amending the domestic industry and injury tests. We discuss below what we consider to be the four most important objections and why we do not agree with them.

1. Should either or both tests be amended, the Commission may no longer be the proper forum for adjudicating section 337 disputes.

We see no compelling reason for moving adjudication of section 337 cases out of the International Trade Commission should the economic tests be amended. The Commission is generally viewed as doing a good job of administering section 337 proceedings. As a non-partisan, fact-finding body with a built-in appeal level, the Commission would continue to be an appropriate forum for adjudicating section 337 disputes. It has decades of experience in addressing unfair trade practices, which would continue to be the basis for section 337 complaints. The Commission has also developed expertise in adjudicating disputes involving intellectual property rights through over a decade of

experience with section 337 litigation. Further, the Commission's experience places it in a strong position to make "judgement calls" in cases where overriding public welfare considerations require denying relief to complainants that otherwise warrant relief.

2. Amending the economic tests would make federal district court intellectual property litigation and section 337 proceedings virtually identical and duplicative.

We do not agree. The relative disadvantages of using federal district court to protect intellectual property rights, particularly patents, from infringing imports makes section 337 an important alternative for redress. Of particular importance, while the Commission concludes the large majority of section 337 cases within one year, district court patent litigation proceedings often take as long as 3 to 5 years to conclude. Furthermore, the section 337 exclusion order is a more effective vehicle for addressing the importation of infringing goods from multiple sources. A section 337 exclusion order is "in rem," that is, directed toward the counterfeit or infringing products. Thus, a firm need obtain only one exclusion order to stop all such imports, regardless of source, including goods produced and/or imported by persons that did not participate in the original proceedings. In contrast, relief available

in federal district court is "in personam," that is, directed against individuals. Consequently, to obtain relief equal to an exclusion order in district court, patent holders must often initiate numerous proceedings, often in different areas of the country, to stop several domestic distributors from marketing the infringing goods.

3. Eliminating the domestic industry criterion, in addition to opening section 337 to U.S. firms presently unable to meet this test, would allow foreign concerns to use section 337 against other foreign and U.S. firms.

We do not view this as a problem. Representatives of the legal community with whom we spoke believe that foreign firms that register intellectual property rights in the United States deserve full government protection. In fact, federal district courts have been adjudicating patent suits initiated by foreign firms for decades. Such an application of section 337 would be consistent with this precedent. In a sense, the domestic industry requirement of section 337 is a disguised "working requirement"--a non-tariff trade barrier used by a number of developing countries. This practice requires that a firm "work" (i.e., use in manufacturing) domestically a patent or other intellectual property right in order to use domestic mechanisms to protect that right. The U.S. government has spoken out in

multilateral forums against the use of such trade barriers because they stifle innovation by allowing infringers to use the research and development work of the original inventor without receiving authorization or paying compensation.

4. Amending the injury test may bring new challenges to the consistency of section 337 with the General Agreement on Tariffs and Trade (GATT) rules on measures members can take to protect intellectual property rights.

We do not share this concern and we understand that the Office of the U.S. Trade Representative has also reviewed this matter and found that eliminating the domestic industry and injury tests would not give rise to GATT violations. We believe that such action would be consistent with the protection historically afforded to registered trademarks and to copyrights by the Customs Service, which protects these types of intellectual property rights from counterfeit and infringing imports without requiring owners to meet an injury requirement. In addition, the panel decision in the only GATT dispute settlement case involving section 337 indicated that the section 337 case under consideration would have been consistent with GATT requirements even without the injury test. Although the panel went on to state that it could envision a situation in which use of section 337 to protect intellectual property

rights may constitute a violation of GATT, the situation outlined by the panel is just as likely to occur at present as it would if the injury test were amended.

We are proposing that section 337 be amended for cases involving intellectual property rights by (1) eliminating the requirements that complainants constitute a domestic industry and be efficiently and economically operated and (2) redefining the injury test so that ownership of a valid U.S. intellectual property right and proof of infringement by imports is sufficient to meet this criterion.

NEED TO IMPROVE ADMINISTRATION OF SECTION 337 PROCEEDINGS

Experience since passage of the Trade Act of 1974 demonstrates that section 337 protection of intellectual property rights could be more effective if the International Trade Commission could (1) expedite the provision of relief to firms when they either need expedited relief or when no respondents participate and (2) issue both exclusion orders and cease and desist orders to remedy the same unfair act.

The Commission presently takes as much as 7 months or longer to provide expedited relief, usually in the form of a temporary exclusion order. Commission regulations give the administrative law judges 4 months to hold a hearing and make an initial determination and give the Commission one month to decide

whether it will review the initial determination and, if so, 2 months to conduct the review and make a final determination.

Many see this timeframe as inordinately long, especially in light of the one-year deadline for providing permanent relief. During this period, respondents can flood the domestic market with counterfeit or infringing goods, thus undermining the effectiveness of the temporary relief. Each of the firms receiving temporary relief that responded to a GAO survey reported that infringing goods entered the country during the course of the temporary relief proceedings and that it was injured by these imports. One firm reported that it lost from $500,000 to $1 million in sales during the course of these proceedings and that the infringing imports hurt consumer confidence in its product to a very great extent. This firm's comments bear noting: "[Our] pricing was totally destroyed. Our credibility was severely impaired. Customers became confused, many stopped buying altogether."

We believe that this problem can be addressed in a way that would reduce by 3 months the present 7-month timeframe for providing relief without reducing the time the administrative law judges would have to hold a hearing and make a determination. We are proposing that, at the request of the complainant, the Commission make temporary relief effective at the time of an administrative law judge's positive initial determination on

temporary relief. In addition, we are proposing that the Commission's review of the initial determination on temporary relief be automatic, thus bypassing the month-long procedure for determining whether to review an initial determination. To ensure that complainants do not benefit should the temporary relief determination be overturned, the complainant in such instances should be required to post a bond. This bond might logically equal the estimated injury that the respondent would incur from the time the temporary relief became effective until the final determination.

The Commission generally takes about 12 months to conclude section 337 proceedings when no respondents participate, otherwise known as default proceedings. Commission decisions emphasize that a default does not establish per se a complainant's right to relief. The Commission requires that the attorney for the complainant make a good faith effort to produce evidence to establish a prima facie case that a violation has in fact occurred. The Commission (1) wants some factual and legal basis for providing relief, (2) needs such information to ensure that the granting of relief is in the public interest, and (3) needs to assure that its sweeping powers to exclude goods are not being abused.

During the course of these proceedings, however, defaulting respondents can continue to import counterfeit or infringing

goods, undermining the effectiveness of the section 337 relief. Virtually all of the firms responding to our survey that had obtained relief in default proceedings reported that their business was injured during the course of these proceedings. About 57 percent of those that indicated they had a basis to judge reported that they lost from $100,000 to $1 million in sales during the course of the proceedings and about 36 percent reported losses of $1 million to $5 million, with one firm claiming to have lost over $5 million in sales. Of these firms, over 87 percent of those that indicated they had a basis to judge reported that the presence of counterfeit and/or infringing goods hurt consumer confidence in their products to at least some extent during the course of the proceedings. About 50 percent of them reported substantial or very great damage. In addition to these losses, they incurred litigation expenses of as much as $1 million, with one firm reporting litigation expenses of over $2.5 million. Defaulting respondents, of course, incurred no litigation expenses.

We suggest a method to resolve this problem that would provide immediate relief to complainants in default proceedings while, at the same time, giving the Commission the opportunity to develop a record to support the granting of relief. We are proposing that, in section 337 cases in which no respondents participate, the Commission, upon the request of complainants, presume the facts alleged in the complaint and issue temporary

relief if the facts so warrant. The defaulting respondents could continue to import goods, but only under bond and subject to re-exportation or destruction should the temporary order be made permanent. The Commission would then continue with its present default proceedings, which would have to be concluded within 6 months. If, after these proceedings, the Commission determines that permanent relief is warranted, it would replace the temporary order with the appropriate permanent relief. In this way, the deserving complainant would be protected from injury during the course of the proceedings and the Commission could develop a record to support the issuance of relief.

We also believe that the Commission can more effectively remedy unfair trade practices by issuing both exclusion orders and cease and desist orders to remedy the same violation. There may be some legal question regarding the Commission's authority to issue both types of relief simultaneously. Section 337(f) authorizes the Commission to issue cease and desist orders "in lieu of" exclusion orders. While the Commission originally read this provision as prohibiting it from issuing both types of relief simultaneously, it has since broadened its interpretation, expanding the instances when it can issue both remedies. Because the statutory support for such action may be in question, we are proposing that section 337 clearly authorize the International Trade Commission to issue both exclusion orders and cease and desist orders to remedy the same unfair trade practice.

NEED TO STRENGTHEN ENFORCEMENT OF SECTION 337 EXCLUSION ORDERS

Firms initiating section 337 proceedings do so with the objective that, should they win, the exclusion orders will effectively stop the counterfeit and/or infringing goods from entering the country. The president of one firm that initiated a section 337 proceeding characterized his expectations of an exclusion order as "a wall around the country." Of course, the high cost of litigating a section 337 case contributes to this expectation.

Although some firms voluntarily stop importing counterfeit or infringing goods covered by exclusion orders, others ignore the orders, placing the enforcement burden on the Customs Service's port inspectors. Because an exclusion order authorizes Customs to exclude, but not seize, counterfeit and infringing goods, some knowledgeable officials do not consider it to be an effective deterrent to importation of such goods. Since Customs cannot seize these goods, foreign infringers who have shipments stopped by Customs are required only to re-export the goods and, thus, lose only shipping charges. Indeed, foreign infringers have been known to "port shop," that is, carry the counterfeit or infringing goods from port to port until they gain entry.

Of the respondents to our survey that indicated they had a basis to judge, nearly two-thirds of the firms that had received exclusion orders reported that counterfeit or infringing goods

covered by their exclusion orders continued to enter the country. About 70 percent of these firms saw substantial decreases in such imports after the exclusion orders were issued. Nonetheless, 75 percent of those that had a basis to judge reported that the counterfeit and infringing imports hurt their sales to at least some extent. Over 45 percent of them reported that sales were damaged to a moderate or substantial extent. Further, company officials told us that the continued presence of infringing goods in the domestic marketplace, sometimes in a form virtually indistinguishable from the original, caused consumers to lose confidence in the authentic products.

We believe steps can be taken to strengthen the ability of Customs' present staff to enforce section 337 exclusion orders. We support initiatives to authorize the Commission to direct Customs to seize goods when enforcing exclusion orders. We suggest that any legislation to this effect provide that the Commission is to use this authority not as an initial remedy but as an extraordinary measure to deal with "predatory" infringers that have tried on more than one occasion to violate existing exclusion orders. Under our proposal, before the Commission could authorize Customs to seize shipments in enforcing an exclusion order, Customs or the complainant would have to present evidence to the Commission that a foreign firm or firms have on more than one occasion attempted to bring counterfeit or

infringing goods into the country in knowing violation of an exclusion order.

We also suggest that Customs intensify its efforts to elicit the support of firms that have obtained exclusion orders in identifying shipments containing counterfeit or infringing goods. Over 25 percent of the survey respondents that received exclusion orders undertook independent investigations and provided the results to Customs. Such information could include the names of companies importing counterfeit or infringing goods or information on particular shipments of such goods. These firms were most often satisfied with Customs' response to the information provided. Customs could elicit such information through an informational brochure or similar document that is provided to firms before they initiate section 337 proceedings. Under current procedures, there is no formal mechanism for firms to obtain such information prior to initiating proceedings. As a result, they may not have realistic expectations of Customs' abilities or appreciate the need to provide assistance.

Mr. Chairman, this concludes my statement. I would be happy to respond to any questions you have at this time.

Mr. PEASE. Thank you very much. We appreciate that testimony.

Could I ask how GAO happened to get involved in this study?

Mr. MENDELOWITZ. The work of the General Accounting Office is initiated usually in one of two ways. Some of our work is at the direct request of a congressional committee, where we will receive a letter from the requester stating what particular project is of importance to the committee and what project they would like us to undertake.

In addition, we have projects that begin through our internal management by objectives system, where we try to ascertain what are the key issues before the Congress and begin projects based on that ascertainment.

The project on intellectual property rights was undertaken under our basic legislative authority, rather than in response to request from a specific requester.

Mr. PEASE. I see.

You mentioned a survey that you sent out to all firms that had filed cases. What was the universe? How many survey instruments did you send out and how many were returned?

Mr. MENDELOWITZ. I think Mr. Natalicchio would like to answer that question.

Mr. NATALICCHIO. We actually surveyed 163 firms. About 71 percent of the 163 firms we surveyed returned completed questionnaires; 10 percent informed us that the information we are seeking was simply not available; 19 percent did not respond.

Mr. PEASE. Is that a pretty good response, by your standards?

Mr. MENDELOWITZ. We view that as a good response and sufficiently high to yield statistically valid results.

Mr. PEASE. OK. I am looking over the testimony of the ITC Trial Lawyers Association and they are opposed to removing the economic injury test. I would like to read the reasons and have you comment on them

They oppose removing that test because: One, eliminating the injury requirement would subject section 337 to needless opposition because of its inconsistency with its international trade obligations, particularly the GATT.

Two, it would interject section 337 into the upcoming multilateral trade negotiations and interfere or prevent accomplishments of U.S. intellectual property goals.

Three, it would increase duplicating litigation by encouraging unsuccessful parties before the ITC to retry the issues in the Federal courts or, having failed in the courts, to retry the issues at the ITC.

And then, finally, would expand the jurisdiction of the ITC far beyond international trade matters and turn the ITC into an international patent court.

I think the matter relating to interfering with our goals in the new round of negotiations is beyond your purview. But what about the possibility that it is a violation of GATT, it would increase duplication, and it would expand the jurisdiction of the ITC?

Mr. MENDELOWITZ. We have looked at the issues that have been cited by the ITC Trial Lawyers Association. For example, with respect to the GATT, we have tried to examine the issue ourselves. We have contacted some leading legal scholars in the area, with re-

spect to our GATT obligations. And we have examined the position taken by the administration.

And I would say that most knowledgeable observers who deal with the issue, do not see any inconsistency between an elimination of the economic tests, under section 337, and our obligations under the GATT. So that we do not view consistency with the GATT as, in fact, a real issue with respect to the elimination of these provisions.

With respect to duplicative litigation, there is, in fact, a fair amount of duplicative litigation that takes place now. And we do not see that there would necessarily be any increase in duplicative litigation because of the removal of the tests.

Third, with respect to the jurisdiction of the ITC, I think it is important to note that removing the economic test does not place any new obligations or responsibilities on the International Trade Commission. Anything that they would do in cases brought under section 337, they are already doing.

All that the elimination of the economic tests would do would be to reduce the number of issues that have to be considered within the proceeding.

So that I would say that we essentially reject all of the arguments made by the ITC Trial Lawyers Association.

Mr. PEASE. Thank you very much. Mr. Crane?

Mr. CRANE. Thank you, Mr. Chairman. Gentlemen, I apologize for my tardy rearrival, but I was testifying at other hearings myself.

I just quickly read over Mr. Mendelowitz's testimony, but I too was curious about your responses to the trial lawyers. I am curious as to why the trial lawyers would find a problem with eliminating this injury test.

Here at home when these kinds of situations arise, it is a clear case of outright theft. It is stealing and I do not see why a person has to prove that he has been injured because of a theft. Obviously, he is injured, one way or another. It may be inconsequential.

What would make the lawyers take the position they do? I mean, I have seen their rationalization here, but——

Mr. MENDELOWITZ. To be honest, I cannot speak for what might be motivating the Trial Lawyers Association. I believe they are operating in good faith, based on their experience and their familiarity with the legislation.

But the importance of these provisions should not be downplayed. When we surveyed the complainants, as to what their litigation costs and the costs of the various components of the litigation consisted of, we found litigation of a 337 case runs somewhere between $¼ million to $1 million, with some costing as much as $2 million.

And the work and preparation necessary to satisfy the economic test can cost as much as half of the cost of a 337 case.

Mr. CRANE. So what you are saying, for all practical purposes, is if I came up with a better mousetrap and patented it, and I was trying to put the capital together to start going into business and someone else saw my mousetrap, and stole my idea in some foreign country, and had access to the capital to immediately go into business, for all practical purposes, I could not even sue. I do not even

have the money to get my company started, much less to go through that process of litigation.

Mr. MENDELOWITZ. I think that is correct. I mean, the cost of pursuing a 337 case is significant, especially for a startup company.

Mr. CRANE. In a domestic case, say I opened up my little operation in my home in Illinois. And somebody in the State of Wisconsin tried to steal my product, have you any idea what those costs are, to pursue a remedy domestically, in that kind of a situation?

Mr. MENDELOWITZ. I do not believe that we have information on that, but there is one important difference between the pursuit of a patent infringement case against a domestic respondent as opposed to an international respondent. And that is, the international respondent is beyond the reach of the courts, in terms of a holder of intellectual property rights being able to recoup compensation from the respondent.

In a domestic case, the complainant at least has the possibility of recouping some form of compensation because the respondent is not beyond the reach of the court.

Mr. CRANE. Then you cannot fine that foreign company for selling in our markets with that stolen product?

Mr. MENDELOWITZ. If the foreign respondent has no domestic presence, you have——

Mr. CRANE. I am assuming that he is exporting my mousetrap here in the United States. We have no remedy, outside of simply denying him further access to the market?

Mr. MENDELOWITZ. That is right.

Mr. CRANE. Unless you can exert some leverage on his government?

Mr. MENDELOWITZ. Yes.

Mr. CRANE. I commend you for your position and it is one I share. This is the most outrageous, to me, of all the unfair or inappropriate trade practices going, the theft of another person's property.

I am bewildered, frankly, as to how—when they initially crafted the law—they determined that I have got to prove that I have been injured in some significant manner before I can redress that kind of grievance.

I thank you gentlemen.

Mr. PEASE. Thank you very much, Mr. Mendelowitz. We appreciate your testimony. As usual, this looks like a good piece of work from the GAO. We appreciate it.

Mr. MENDELOWITZ. Thank you.

Mr. PEASE. Our final panel for the afternoon will consist of Mr. Ron Kahle, representing the National Pork Producers Council; Ms. Lucy Sloan, representing the North Atlantic Fisheries Task Force; and Mr. Eugene Stewart, representing Roses, Inc., the Floral Trade Council, and Bomont Industries, Inc.

I am curious to know which one of you is Lucy Sloan. Did we outlast Lucy Sloan or is there a substitute for Lucy Sloan?

Mr. Kahle, you are here? OK, let's—is Mr. Stewart here? You are accompanied by two associates from the Pork Producers Council, is that correct?

Mr. KAHLE. Yes. Mr. Mark Sandstrom, representing us as counsel and Mr. Doyle Talkington, who is a staff member here in Washington.

Mr. PEASE. Very fine. Well, you may proceed then.

STATEMENT OF RON KAHLE, PRESIDENT, NATIONAL PORK PRODUCERS COUNCIL, ACCOMPANIED BY MARK ROY SANDSTROM, COUNSEL, AND DOYLE TALKINGTON

Mr. KAHLE. Mr. Chairman, my name is Ron Kahle. I am a pork producer from Kearney, NE. I am also president of the National Pork Producers Council, which I will refer to as the NPPC. And I am testifying today on behalf of the 110,000 hog farmer members of the council.

The National Pork Producers Council is particularly concerned about the treatment of agricultural commodities under the U.S. trade laws because they have not been given relief equal to that provided industrial products.

The problem may be due to a lack of understanding that most agricultural products must be treated or processed before they can be sold to end users or manufacturers. For example, the slaughter of live hogs into fresh pork. That means pork producers and initial processors work together to produce the initially processed product and therefore are part of the same industry.

In addition, the impact of unfair trade practices in the agricultural sector differs from that found in the industry sector because agricultural markets function differently from industrial markets. An increase in supply decreases the prices of our products and, for example, increases in the supply of pork have negative effects on both pork meat and hog prices.

This week a bill was introduced which clarifies the trade laws to reflect the reality of trade and agricultural products. A companion bill, S. 2244, has also been introduced. The bill defines producers and initial processors of products which are linked by a single, continuous line of production and which have common economic interests as part of the same industry.

Presently, the ITC requires a legal relationship, such as a contract or interlocking ownership, to establish economic interest. The bill would insure that pork and other raw agricultural commodity producers are able to obtain relief against subsidized or dumped imports of the initially processed products causing injury.

Since imports of the processed product affect all elements of the industry, it simply makes sense to allow producers as well as processors to petition for relief.

The problem is that the ITC has become very rigid and formalistic in determining whether the raw product producers may obtain such relief. This has frustrated the intent of Congress, not to mention the agricultural producers themselves.

As it stands now, cattlemen cannot bring a case against beef imports being dumped or subsidized because cattlemen would be considered producers of live cattle and not producers of fresh beef. They would have no other recourse since live cattle are not imported into this country for human consumption.

Let me give you another example. The NPPC recently brought a countervailing duty case against subsidized swine and pork from Canada. The ITC found that pork producers and packers represented different industries and that while pork packers were being injured by swine imports, pork packers were not injured by pork imports.

The Department of Commerce imposed duties on imports of Canadian live swine but not Canadian pork. The consequences of the ITC decision is that Canadian packers are now slaughtering the live hogs into pork meat before sending the product over the border, thereby eliminating much of the beneficial effect which the countervailing duties on swine would have on domestic producers and packers.

While swine imports from Canada have decreased, pork meat imports have already soared. The Department of Agriculture predicts that this increase will be equivalent to the amount of swine which would have been imported but for the countervailing duty.

In essence, the U.S. pork producers have won the battle to achieve a level playing field but lost the war.

The enactment of the proposed bill is needed. Such legislation is crucial to protect the agricultural sector from unfairly traded products. The National Cattleman's Association, the lamb and raspberry industries, and Farmland Foods join us in supporting this legislation.

I appreciate the opportunity to present this testimony on behalf of the National Pork Producers Council and would be happy to answer any questions you might have.

[The prepared statement follows:]

TESTIMONY

of the National Pork Producers Council

Summary of Testimony

The National Pork Producers Council has found, through its own experience, that agricultural products are not given relief equal to that provided industrial products. The problem may be due to a lack of understanding that agricultural products must be treated or processed before being sold to end users or manufacturers. Producers and initial processors, therefore, are part of the same industry. Also, agricultural markets function differently than industrial markets -- an increase in supply decreases the price of the product, having an adverse impact upon both producer and initial processor.

The NPPC supports the House bill introduced this week which addresses the reality of trade in agricultural products. Companion bill S.2244 was introduced in the Senate. The bill clarifies legislative intent by providing that producers and processors of products which are linked by a single continuous line of production and which have common economic interests are part of the same industry. As the law stands now, cattlemen could not bring a case against beef imports because they are not producers of fresh beef. Cattlemen would have no other recourse since live cattle are not imported into the U.S. for human consumption.

The ITC presently administers a rigid test requiring a single continuous line of production and an economic relationship which must be evidenced by some kind of legal relationship. The second part of this test produces the anomalous result of the Canadian swine case, that is, duties were imposed on swine from Canada but not on pork. As a result, swine imports from Canada have decreased but, not surprisingly, pork imports soared 17 percent between 1984 and 1985. The legislation requires the ITC to reach determinations in a manner which reflects the realities of the way agricultural products are produced and traded.

Other supporters of this clarification of the present trade law include the National Cattleman's Association, the lamb and raseberry industries, and Farmland Foods.

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Testimony

of the National Pork Producers Council

My name is Ron Kahle and I am a pork producer from Kearney, Nebraska. I am also President of the National Pork Producers Council (NPPC), and am testifying today on behalf of the 110,000 members of the Council, the largest commodity dues paying organization in the U.S. I am accompanied by Mr. Mark Roy Sandstrom, Counsel to the NPPC.

The National Pork Producers Council is particularly concerned about the treatment of agricultural commodities under the U.S. trade laws. We are specifically speaking of situations where agricultural products produced abroad are subsidized or dumped in the United States or otherwise unfairly traded. Pork producers are supportive of fair and equitable trade, but in some agricultural sectors there is little or no competition because of subsidized or dumping of imports that prevent U.S. producers from being able to compete on an equal basis.

Under U.S. trade statutes, agricultural commodities have not been given relief equal to that provided industrial products. When looking at the track record of agricultural cases, the message is clear. The attached article, written by Commissioner Seeley Lodwick of the International Trade

Commission (ITC), explains that of the 11 unfair trade injury investigations concerning agricultural products filed at the ITC over the past 3 1/2 fiscal years (1982 through the first half of 1985), only one case ended in an affirmative determination. This success rate of 9% compares with an approximate rate of 50% for cases concerning industrial products. The recent decision of the ITC in the countervailing duty investigation concerning imports of subsidized swine and pork from Canada, exemplifies the difficulties which producers of agricultural commodities have in obtaining relief from unfairly traded imports under the U.S. trade statutes.

The problem may be due to a lack of understanding of the basis upon which agricultural products are traded. Agricultural products are different from industrial products in the sense that most agricultural products must be treated or processed before they can be sold to end users or manufacturers. Since they cannot be sold as is, they must be initially processed to yield a marketable good or a good available for further processing, -- for example, the slaughter of live hogs into fresh pork. That means pork producers and initial processors work together to produce the initially processed product and therefore are part of the same industry.

In addition, the impact of unfair trade practices in the agricultural sector differs from that found in the industrial sector. When the ITC has examined agricultural

products it has applied the same test as with industrial products, looking for specific instances of price undercutting, for example, rather than examining the effect of supply on the price of commodities in the marketplace.

Agricultural markets function differently than industrial markets. In the agricultural sector, an increase in supply decreases the prices of our products. Take, for an example, pork which is a commodity just as swine is a commodity. Both are traded on the commodities market. Pork prices fluctuate from day to day with changes in supply and demand, and pork prices have a direct impact upon hog prices. Increases in the supply of pork have negative effects on both pork and hog prices.

This week, a bill was introduced which makes clarifications in the Trade Act of 1930 to insure that the law is administered in a way which reflects the reality of trade in agricultural products. A companion bill, S. 2244, has also been introduced in the Senate. The bill defines producers and initial processors of products which are linked by a single continuous line of production and which have common economic interests as part of the same industry. This clarification would insure that pork and other raw agricultural commodity producers are able to obtain relief against subsidized or dumped imports of the initially processed products causing injury. Since imports of the processed product affect all

elements of the industry, it simply makes sense to allow producers as well as processors to petition for relief. As it stands now, pork producers could not bring a countervailing duty action against imports of fresh pork because producers are not considered part of the industry producing that product, even though imports of fresh pork certainly affect pork producers.

Similarly, cattlemen could not bring a case against beef imports being dumped or subsidized because cattlemen would be considered producers of live cattle and not producers of fresh beef. Without this clarification of legislative intent reflected in the proposed bill, cattlemen would have no other recourse since live cattle are not imported into this country for human consumption.

It should be stressed that, in prior cases, producers of the raw product have been able to bring cases and obtain relief against unfairly traded imports of the processed product. The problem is that the ITC has become very rigid and formalistic in determining whether the raw product producers may obtain such relief. This has frustrated the intent of Congress with regard to the application of the countervailing and antidumping statutes to agricultural commodities, not to mention the agricultural producers themselves.

The interest of the NPPC in this legislation derives from a recent countervailing duty investigation involving subsidized swine and pork from Canada. In that investigation

the ITC found that pork producers and pork packers were producers of different products. The ITC further found that while pork producers were being injured by imports of subsidized swine from Canada, pork packers were not being injured by imports of fresh, chilled and frozen pork from Canada. The ITC underestimated the impact of the Canadian imports, treating imports of swine and pork from Canada separate and apart from each other.

As a result of the ITC's determination, on August 15, 1985, the Department of Commerce issued a countervailing duty order imposing duties on imports of Canadian live swine, but not imposing duties on Canadian pork. The consequence of the ITC decision is that Canadian packers are now slaughtering the live hogs into fresh, chilled or frozen pork before sending the product over the border, thereby eliminating much of the beneficial effect which the countervailing duties on swine would have on domestic producers and packers. With the raw and initially processed products so integrally related, duties on only one do little to help the domestic industry. In essence, the U.S. pork producers have won the battle, but lost the war.

Indeed, the expected shift from hogs to pork has already begun. Imports of Canadian hogs are down over the volume of imports prior to the ITC's decision. However, not

surprisingly, pork imports from Canada are increasing. The latest USDA Foreign Agriculture Livestock Circular reveals how obvious and significant the shift to pork will be:[1/]

> "U.S. imports of live hogs from Canada in 1986 are projected to range between 500,000 to 750,000 head. At the time of the ITC determination in August 1985 to place a countervailing duty on live hogs from Canada (about $7 per head), imports were 31 percent ahead of the 1984 level. Imports for all of 1985 totaled 1,226,151 head, a decline of 7 percent from 1984.
>
> Approximately 205,000 to 215,000 tons of fresh, chilled, and frozen pork may be imported from Canada in 1986. This is an increase of about 20 percent from 1985 and largely represents the pork equivalent that would be produced from the decline in live hog imports in 1986. Imports for 1985 totaled 183,210 tons, an increase of 17 percent from 1984." (Emphasis added.)

The ITC's determination in the case of Canadian imports has come at the same time that pork imports from other countries are also increasing, particularly from the European Community ("EC"). Comparing imports from the EC in 1984 and in 1985, USDA figures reveal that there has been a 30.4% increase in imports of fresh, chilled and frozen pork from EC producers and processors. These imports are, of course, also subsidized under the EC's Common Agricultural Policy ("CAP"). With overall imports increasing dramatically, the ITC's pork decision was particularly untimely.

1/ U.S. Department of Agriculture, Foreign Agriculture Circular, Dairy Livestock and Poultry World Livestock and Poultry Litigation, March 1986.

Congress stated in the legislative history of the Trade Agreements Act of 1979 that agricultural commodities require special attention with respect to the application of the injury provisions of the countervailing duty and antidumping statute.[2/] Special concern was expressed in the case, for example, of raw and initially processed products, particularly in the case of livestock. In applying this legislative intent in past cases, the ITC developed a two part test to determine whether producers of raw agricultural commodities could be linked in the same industry as the producers of the processed product.[3/] The test requires that the raw and processed products be linked through a single continuous line of production and that there is a coincidence of economic interest between the producers of the raw and

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2/ Senate Finance Committee Report on the Trade Agreements Act of 1979:

> "Because of the special nature of agriculture, . . . special problems exist in determining whether an agricultural industry is materially injured."

The report went on to imply that there was a special relationship, for example, between cattle farmers and processors. S. Rept. No. 96-249, 96th Cong., 1st Sess. 88 (1979).

3/ See Lamb Meat From New Zealand, Inv. No. 701-TA-80 (Preliminary), USITC Pub. No. 1191 [3 ITRD 1725] (1981); Frozen Concentrated Orange Juice From Brazil, Inc. No. 701-TA-184 (Final), USITC Pub. No. 1406 [4 ITRD 1693] (1983); Fish, Fresh, Chilled or Frozen, Whether or Not Whole, But Not Otherwise Prepared or Preserved From Canada, Inv. No. 701-TA-40 (Final), USITC Pub. No. 1066 [2 ITRD 53-1] (1980). Certain Red Raspberries From Canada, Inv. 731-TA-196 (Final), USITC Pub. No. 1707 [7 ITRD _____] (1985).

processed product. In applying the second part of the test, the Commission has required that there be common ownership between producers and packers or that the prices of the raw and processed products be linked on a contractual basis.

Unfortunately, the ITC has focused increasingly on legal relationships within an industry and has ignored economic relationships between the commodity producers and processors. In the pork industry, although both pork producers and packers share a coincidence of economic interest resulting from the nature of the pork market, the second prong of the ITC's legal test was not satisfied in the view of the ITC.

Since only 4-5% of pork producers actually own packing plants, the common ownership factor did not apply. However, it is very clear to individuals familiar with pork and other agricultural commodities, that the economic interdependence of producers and processors and the impact of imports upon them is the same regardless of whether 5% or 90% of the processing plants are owned by producers.

The Commission also ruled that the price relationship standards were not met because the Commission did not find a contractual relationship between hog and pork prices. The Commission basically ignored the fact that the market itself imposed over a 90% price correlation between hog and pork prices. Where the processed product is produced from the raw

commodity substantially or wholly through a single continuous line of production and where the packing process adds only a small value to the livestock product, the price correlation will be imposed by the market. Pork and other livestock producers have a firm opinion on this point, since it is difficult to conceive of any other commodity which better satisfies the single continuous line of production test.

The relevant question is whether there is a price relationship, not whether it exists as a result of contractual or market factors. The ITC's decision to impose a requirement of such a legal relationship is unneccesary due to the direct price relationship between hogs and pork.

The bill introduced in the House maintains the two-part test currently applied by the International Trade Commission to determine where an industry will be deemed to include producers of both the raw and the processed agricultural product. This means that the processed product must be produced from the raw product:

1) through a single continuous line of production
2) and there must be a coincidence of economic interest between producers of the raw and processed product.

However, the bill makes it clear that the coincidence of economic interest can be based upon economic as well as legal factors.

Among the economic factors to be considered in examining coincidence of economic interest under the bill are price correlation and value-added. The International Trade

Commission will be directed to examine the degree of correlation between prices of the raw and processed agricultural commodity and, concerning value-added, the Commission will determine whether the raw agricultural product constitutes a significant percentage of the value of the processed product. This correlation would be generally found to apply in the case of hog producers and packers of the pork, as well as most livestock commodities.

The proposed bill also adds new language regarding the determination of threat of material injury. The Commission will consider the impact which the imposition of duties on either the raw or the processed product (but not both) would have upon imports of the other product. In addition, the proposed bill would clarify that producers of the raw product which were deemed to be part of the industry producing the processed agricultural product would have standing to initiate countervailing duty and antidumping cases concerning imports of the processed product. As an example, cattlemen could bring cases against unfairly traded beef imports causing injury to the producers. Since the live animal is generally not imported (pork is an exception), livestock producers would be precluded from bringing cases against meat imports, unless their industries happened to be sufficiently vertically integrated under the ITC's present policy.

This legislation would require the ITC to apply the injury provisions of the countervailing and antidumping statute to agricultural commodities in a manner which reflects the realities of the way such commodities are produced, priced and sold taking into account the actual manner by which producers and processors of agricultural commodities are affected by unfairly traded imports.

There is wide support for this bill. For example, the National Pork Producers Council, the National Cattleman's Association, the lamb and raspberry industries, and Farmland Foods, support the legislation.

For the reasons raised in my testimony, the NPPC urges the Committee to do all it can to insure that agricultural commodity producers are given fair and effective treatment under the trade laws. In particular, the enactment of the proposed bill is needed, since such legislation is crucial to protect the agricultural sector from unfairly traded products.

I appreciate the opportunity to present this testimony on behalf of the National Pork Producers Council, and would be happy to answer any questions you might have.

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Mr. PEASE. Thank you very much, Mr. Kahle.

You mentioned in your testimony a bill that had been introduced this week and you mentioned a Senate number. Do you have a House number and can you identify the chief sponsor of that legislation?

Mr. KAHLE. We will check and see if we have that information for you.

Mr. SANDSTROM. We do not have the number at this point in time. I think Mr. Talkington has the list of sponsors of the bill that was introduced in the House last night. We understand it includes at least four members of the Ways and Means Committee and several members of the Agricultural Committee.

Mr. PEASE. If you can supply that number for us at a later time. Mr. Crane?

Mr. CRANE. Thank you, Mr. Chairman. Thank you, gentlemen, for your testimony.

I confess to a great deal of ignorance about this particular problem that you are describing. I want a clarification. If I am a Canadian cattleman and I export livestock in a live condition into the States, and even if I were getting subsidies to do that and dumping, is that a criminal offense under our existing trade law?

Mr. SANDSTROM. It is not a criminal offense but it would be an offense that would be subject to the countervailing duty statutes.

Mr. CRANE. If I slaughter and make it into hamburger up there and then I dump the hamburger here, is that also subject to countervailing duties?

Mr. SANDSTROM. At this point in time, the answer would be no, even if in fact you brought the carcass over. It would not be subject. One problem that has generated or developed from our cases is the Department of Commerce now takes one view on this issue and the International Trade Commission takes another view. The answer basically is that the Commission's view is the answer, which is no.

Mr. CRANE. That is bizarre. If anything, I would think it should be exactly the reverse if you are going to make a distinction. I do not see how you can make a distinction.

Is that what you are advocating, that no distinction be made, whether they are shipping the livestock here or whether they are shipping the hamburger in here, if you can demonstrate there were subsidies or they are dumping to undercut markets here in this country, that they be treated the same?

Mr. SANDSTROM. Basically, that is correct. There was a line of cases that the Commission had developed which began to deal with this problem. The problem is that the implementation of the policy has become very rigid and formalistic by the Commission and they are now basically not looking at the economic factors when they decide whether or not to, in fact, link the products together.

Mr. CRANE. What conceivable rationalization can they offer to make this arbitrary distinction?

Mr. SANDSTROM. I think the main problem that we and other agricultural commodity representatives have before the Commission is a real lack of understanding on the part of many of the Commissioners, of how agricultural products are traded. Many of the Commissioners tend to view these cases as industrial cases involving

discrete sales of small numbers of products as opposed to commodities which are traded in commodity markets and where increases in supply automatically bring decreases in prices. Those kinds of problems are difficult to discuss with the Commission because many of them, as I said, view these in a sense of industrial products and apply the wrong criteria.

Mr. CRANE. What are the methods by which the Canadians have been subsidizing this? Is that through government?

Mr. KAHLE. Both the Government of Canada and provincial governments and some other subtle ways they do it, by providing some equipment to individual farmers and things like that most recently, I think.

Mr. CRANE. In other words, the government is a significant partner in Canada? I didn't realize that, in agricultural production.

Mr. KAHLE. Yes.

Mr. CRANE. Is that just in livestock or hogs or does that extend to all aspects of agriculture up there?

Mr. SANDSTROM. It covers a number of commodities in Canada.

Mr. CRANE. Is that a recent practice or have they been doing that all along?

Mr. KAHLE. I don't know how long. We do know that it is happening and has been happening.

Mr. SANDSTROM. In the case of pork production, it really went into effect significantly in the beginning of the 1980's and really changed the way in which pork was produced and sold in Canada.

Mr. CRANE. It is kind of puzzling to me why you would use taxpayers' money to try to export a product and sell it for less than your cost involved in it. Their rationale behind that is puzzling to me, as puzzling as our slaughtering 600 dairy cows to relieve the excess dairy products on the market and convert it into hamburger to compete with you people.

I thank you for your testimony. I am totally in sympathy with your position on that capricious distinction that is being made. Hopefully, we can remedy that.

Mr. KAHLE. Thank you. We do have a number for you on the House bill. It is 4534.

Mr. PEASE. Thank you very much, Mr. Kahle. We appreciate the work of you and your associates. We will excuse you now. We really appreciate your appearing.

Mr. KAHLE. Thank you for the opportunity.

Mr. PEASE. For understandable reasons, because of the chaotic situation around here, one of our witnesses, Mr. Stewart from Roses Inc., thought he would not be on before 2 p.m. He is enroute and will be here at 2 p.m.

The subcommittee will stand in recess until 2 p.m., at which time we will return to hear Mr. Stewart's testimony.

[Recess.]

Mr. PEASE. The subcommittee will resume its sitting.

We will hear now from Mr. Eugene Stewart, representing Roses Inc., the Floral Trade Council, and the Bomont Industries, Inc.

Mr. Stewart, we apologize for any inconvenience we might have caused you. Apparently you went off thinking—and with good reason—that we would be busy until 2 o'clock, and we finished early. So we are back in session now, and you have the floor.

STATEMENT OF EUGENE L. STEWART, SPECIAL COUNSEL, ROSES INC., FLORAL TRADE COUNCIL, AND BOMONT INDUSTRIES, INC.

Mr. STEWART. Mr. Chairman and members of the committee, it is a privilege for me to be here.

Let me say a word about my credentials to present views to this subcommittee, which ought to be considered.

I am in my 35th year in the practice of law in Washington, specializing in international trade law. I represent domestic industries and specifically utilize the remedies that the Congress has provided to correct unfair competition.

Therefore, I have considerable experience on the subject matter of the trade reform legislation here under consideration.

My main purpose in being here, Mr. Chairman and members of the committee, is to express views and give advice to the committee concerning essential reforms in existing trade legislation.

Before doing so, on behalf of Roses Inc., I have presented at the desk the text of H.R. 1701, a single-page fact sheet and a more extensive fact sheet pertaining to the Rose tariff equity bill. That bill has been the subject of hearings before this committee, and views on H.R. 1701 are included in the committee print of the subcommittee, dated September 16, 1985, at page 423.

Because the omnibus bill prepared by the subcommittee contains in title II, subtitle B, permanent changes in tariff treatment, and because this bill has been the subject of hearings by the subcommittee, I ask that it be included as section 223 of the committee's omnibus bill. May those materials be made a part of the record, Mr. Chairman?

Mr. PEASE. Mr. Stewart, the Chair will be happy to include H.R. 1701, the text of that bill, and the summary fact sheet in the committee record at this point, and we will look at the possibility of putting in your full fact sheet. I note that that is quite extensive. If that presents no printing problems, as far as the staff is concerned, we will do that as well.

[The information follows:]

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99TH CONGRESS
1ST SESSION

H. R. 1701

To amend the Tariff Schedules of the United States to provide for rates of duty on imported roses consistent with those maintained by the European Economic Community on imports of roses from the United States and other nations.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1985

Mr. PANETTA introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Tariff Schedules of the United States to provide for rates of duty on imported roses consistent with those maintained by the European Economic Community on imports of roses from the United States and other nations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subpart G of part 15 of schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by striking out item 192.18 and inserting in lieu thereof the following:

"					
	192.14	Roses: If entered during the period from November 1 of any year to May 31 of the following year, inclusive	24% ad val.	40% ad val.	
	192.16	If entered during the period from June 1 to October 31 of any year, inclusive	17% ad val.	40% ad val.	".

(b) Items 192.15 and 192.17 are redesignated as 192.11 and 192.13, respectively.

SEC. 2. The amendments made by the first section of the Act shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the date of the enactment of this Act.

○

SUMMARY FACT SHEET

THE PLIGHT OF DOMESTIC ROSE GROWERS

The United States domestic rose-growing industry is an important agricultural industry with growers located in 33 states. These are family-operated farming businesses using new technologies, more efficient production and expanded promotional activities to maintain their market.

However, in recent years, domestic producers of fresh cut roses have suffered serious injury and loss of market share as a result of an increasing level of imported roses from such countries as Colombia, the Netherlands and Mexico.

The volume of exports from all sources has significantly increased on an annual basis since 1977. In 1980, imports of roses represented approximately 7.7% of total U. S. consumption. That figure jumped to 26.1% in 1985, and projections for 1986 show imports reaching 31.7% of total U. S. consumption.

As a result of these alarming statistics, domestic rose growers, through their national trade association, Roses Incorporated, have repeatedly, but unsuccessfully invoked domestic trade law remedies to gain relief from the rising tide of foreign rose imports. The following is a breakdown of antidumping, countervailing duty and other unfair trade cases filed by domestic rose growers in recent years:

- 1974: Countervailing duty investigation is filed against fresh cut flowers from Colombia. Evidence of unfair trade practice (10.2% subsidy) found; no duties imposed.
- 1977 and 1979: Petitions filed with the ITC under Section 201 of the Trade Act of 1974. The ITC issued a negative determination in both cases.
- 1980: Countervailing duty petition filed concerning fresh cut roses from Israel. Following court action, the ITA, in administrative review, found subsidies of up to 27.94%, and countervailing duties of 22.56% are presently being assessed.
- 1980: Countervailing duty case filed against fresh cut roses from the Netherlands. The International Trade Commission dismissed the case finding no injury.
- 1981: Antidumping duty petition filed against fresh cut roses from Colombia. Department of Commerce refused to investigate.
- 1982: Countervailing duty petition filed concerning roses and other cut flowers from Colombia. Despite new subsidy programs, a suspension agreement is negotiated in January 1983 and still stands.
- 1983: Second antidumping duty case filed against the Colombian government. The ITA found dumping was taking place, but the ITC found no injury; ended the investigation. The case is now being appealed in the U. S. Court of International Trade.
- 1983: Countervailing duty petition filed concerning roses from Mexico. In 1984 the ITA decided that the benefit conferred was not countervailable because widely available to Mexican agriculture.
- 1985: Petition filed by domestic rose growers with the United States Trade Representative (USTR) under Section 301 of the Trade Act of 1974. USTR declined to initiate investigation.

The above summary of actions clearly outlines the efforts by domestic rose growers to pursue relief from surging imports through existing trade laws. Yet the results of these actions have provided little import relief despite various findings of unfair trade practices. It is apparent that the only recourse now lies within the legislative process.

As such, U. S. rose growers urge Members of Congress to support H. R. 1701, a bill introduced by Rep. Leon Panetta (D-CA) which would help the domestic rose grower attain an equity of marketplace by establishing tariffs similar to those held by the European Economic Community.

A FACT SHEET

About the impact of imported fresh cut roses on the United States rose growers.

SUMMARY

In eight years the U. S. rose growers have lost nearly 30% of the domestic market for fresh cut roses. In these eight years they have:

- Sponsored research that has made the U. S. rose greenhouse more efficient and competitive.
- Made capital investments in their greenhouses to put in place the results of sponsored research, including energy-saving systems that let them grow roses with 60% or more fuel savings over 1978 operations.
- Established a promotional program that is selling more roses to more people. (A program in which their trade association invests 65% of its grower dues income.) A program necessary because the foreign growers do little to promote roses; they just use the existing market system and transportation set up by domestic growers.
- Held numerous educational meetings to better train industry members in better growing and marketing techniques.
- And...yes, they have also come to Washington and asked for help from Congress, and through implementation of existing trade laws that Congress told them would provide the needed remedies to unfair trade practices and entry of subsidized roses.
- We have appealed through 201 Escape Clause actions, an antidumping case, multiple countervailing duty actions, and, finally, a 301 case before the United States Trade Representative, for relief, with little success. Also, in the 97th, 98th and 99th Sessions of Congress, we have asked for favorable consideration of legislation that would bring U. S. rose tariffs in line with those of the European Economic Community (EEC).

The bottom line is that after doing all of these things they are still losing 3%-5% of market share a year to the subsidized and otherwise unfairly traded imports, and they have found the trade laws do not work for small family-owned businesses. The facts are they have probably tried more remedies at law than any other group visiting Washington.

They now ask Congress itself to act to correct the problems that are well beyond their control.

For those who care about saving this small family-owned business, we present this Fact Sheet and request your support of legislative action.

1. Who is providing you with this information?

The information provided in this document is a compilation of data and legal opinion developed by Roses Incorporated and its legal counsel.

Roses Inc. is the national trade association of fresh cut rose growers in the United States. The association represents over 80% of the U. S. growers and U. S. rose production.

Members of the association are independent family-owned greenhouse owners throughout the United States.

2. Where do the imported roses come from?

Fresh cut roses are exported to the United States, primarily from Colombia, Israel, The Netherlands, and Mexico.

3. The Numbers and the Trends.

The volume of exports from all sources has significantly increased on an annual basis since 1977. The annual increase has reached as high as 52%.

According to the U. S. Department of Commerce IM-146 Report, actual hybrid tea and sweetheart rose imports since 1978 look like this:

1978	15,950,000
1979	39,965,000
1980	44,497,000
1981	67,500,000
1982	94,100,000
1983	126,100,000
1984	158,799,000
1985*	168,573,000

*In 1978-1984, the IM-146 Report of the U. S. Department of Commerce was based on formal entry of rose shipments of $250.00 or greater. In 1985, the value on formal entry for statistical recording was raised to $1,000.00 per shipment. As numerous cut flower shipments are under $1,000.00, this change distorts the 1984 to 1985 import growth figures significantly, and provides an incentive for offshore shippers to send smaller shipments to the United States.

It is our estimate that actual rose entries in 1985 were in excess of 190,000,000 stems.

4. Import penetration in relation to U. S. production and total consumption continues to increase at a rapid rate.

- In 1982, imports represented 20.3% of total U. S. production and 17.2% of total consumption.
- In 1983, imports represented 25.2% of total U. S. production and 20.5% of total consumption.
- In 1984, imports represented 34.5% of U. S. production and 25.6% of total consumption.

We expect U. S. total production in 1985 will be about 475,000,000 rose stems. Assuming that figure for 1985, and adding the very conservative 168,573,000 rose imports, we have a total consumption estimate of 643,573,000 rose stems in 1985. This would mean, on a very conservative basis, imports represented 26.1% of the total U. S. market in 1985. If more nearly correct figures of 190,000,000 imported stems are used, then the import penetration of the U. S. market is more like 29.5%, or approximately one rose out of three was imported.

Clearly, one rose out of five bought in the U. S. in 1983 was imported. In 1984, one rose out of four bought in the U. S. was from outside the United States.

Other cut flowers such as carnations and pompon chrysanthemums were targeted for import earlier than roses and close to 80% of these crops are now imported, giving rose growers clear signs this could also be their fate in the near future.

5. An Early Look at 1986 — Import Growth Expands!

The USDA Ornamental Market News Service weekly publication shows an increase of rose imports in the first eight weeks of 1986 of 8 million plus roses.

That's more than one million more roses a week entering the U. S. than for the same period last year.

Assuming that increase stays the same throughout the year, we will have 52 million more roses in the U. S. in 1986 over 1985.

Assuming domestic production stays at the 1985 estimated level of 475,000,000 (stable or declining U. S. production is likely in the face of such large import gains), and imports grow from the conservative 168,573,000 figure of 1985 by 52,000,000 stems, the imports in 1986 will have 31.7% of total consumption, using very conservative figures.

6. Rose growing, a family-owned greenhouse business in the U. S., is on the decline.

The U. S. Department of Agriculture publication, "Floriculture Crops," shows there were 240 U. S. rose growers in 1980, and only 221 in 1984.

7. A small industry of 221 growers has been fighting to suvive.

Growers have invested considerable sums to modernize their operations and improve their competitive position. They have:

A. Conducted research through their trade association on ways to increase production and conserve costs. A good example of this work and the grower benefits is in energy conservation. By using new greenhouse covering or insulating curtain techniques, growers can grow roses with 40%-60% fewer units of fuel than in 1978. Work on nutrition, atmosphere control, addition of carbon dioxide and supplemental lighting have also increased production.

B. They have expanded their sales efforts with a consumer-oriented public relations program operated by their trade association. In 1986, 65% of the association's grower dues income will be spent in this program, which has expanded sales but is unable to keep pace with the increasing exports which contribute little or nothing to the support of rose promotion.

C. Conducted educational meetings to keep members informed on research and promotion programs, general crop production and postharvest care, so members can tie in with the latest information to keep as competitive as possible.

D. Conducted an active program in Washington, D. C., to explain the import problems to agency officials and legislators.

Our Washington program is funded by the voluntary support of approximately 70% of the association grower membership, and seeks a fair marketplace for the U. S. grower. In this effort our main thrust has been to attack the subsidies to offshore growers and the unfair business practices they follow by pursuit of the traditional remedies at law provided by Congress.

8. The Roses Inc. Import Policy

Our aim is not to restrict the flow of imported roses, but rather to take the foreign governments, their subsidies, and foreign grower unfair trade practices out of our marketplace.

We want a level playing field and are willing to compete with growers from any location, but it is unfair to make us fight with our hands tied.

9. What has the rose industry done in Washington to seek relief?

THE DOMESTIC ROSE GROWERS HAVE BEEN VIGILANT IN INVOKING THE DOMESTIC LAW REMEDIES PROVIDED BY CONGRESS TO SECURE AN ALLEVIATION OF THE STEADILY INCREASING LOSS OF THE DOMESTIC MARKET TO IMPORTS, BUT WITH ONE EXCEPTION THOSE REMEDIES HAVE PROVED INEFFECTIVE BECAUSE OF ADMINISTRATIVE ACTIONS WHICH FAIL TO CARRY OUT THE INTENT OF THE CONGRESS.

(a) Escape clause actions.

(i) In 1977, on application of the Society of American Florists, the International Trade Commission (ITC) carried out an escape clause investigation under Sec. 201 of the Trade Act of 1974 to determine if increased imports of fresh cut flowers were causing or threatening serious injury to the domestic floricultural industry. Roses Inc. participated with testimony on the issues. The ITC decided in the negative in August 1977.

(ii) In November 1979, Roses Incorporated petitioned the Commission to conduct an escape clause investigation to determine if the domestic rose growers were being seriously injured or threatened with serious injury by increased imports of fresh cut roses. In April 1980 the Commission again decided in the negative.

(b) Countervailing duty actions.

(i) In 1976, the Treasury Department conducted a countervailing duty investigation against fresh cut flowers from Colombia, in which it determined that the Government of Colombia was subsidizing its growers with benefits valued at 10.2% of the dutiable value of imports from that country. Countervailing duties were not imposed, however, because the Government of Colombia diverted the funds from the growers to a Government organization to assist the producers in their exports. The industry received no benefit from that investigation, notwithstanding the unfair advantage which the subsidies granted the Colombian flower growers by that Government conferred upon them in competing in the U. S. market.

(ii) In January 1980, the domestic rose growers through Roses Incorporated initiated twin countervailing duty investigations against subsidized exports of roses to the U. S. from the Netherlands and Israel. The Netherlands case was subject to the injury test, but not the Israeli. (Israel had not signed the international agreement which requires the U. S. to add the injury test to countervailing duty investigations.) The Netherlands case was washed out by the International Trade Commission in February 1980 with a negative determination of injury. The roses from Israel case matured into a countervailing duty determination of net subsidies of 1.5%. Roses Incorporated appealed that decision to the Court of International Trade which remanded the case to the International Trade Administration (ITA) to reinvestigate three particular subsidies. The ITA did so, and this time found that when correctly investigated, those subsidies amounted to 11.5%.

The present countervailing duty deposit rate stands at 22.56%. This rate, and countervailing duties assessed in the past certainly understate the true extent of Israelis subsidization of roses since the Government of Israel has refused to respond to the agency's questionnaires concerning actual subsidy levels and since the Court of International Trade last year found the agency had improperly excluded certain subsidies from its past calculations.

(iii) In August 1982, the International Trade Administration initiated, at the request of selected grower members of the American Farm Bureau, and Roses Incorporated, a new countervailing duty investigation on roses and other fresh cut flowers (except miniature carnations) from Colombia. In November 1982, the ITA preliminarily determined that the Colombian government, under a program known as "CAT", was subsidizing its flower growers to the tune of 5% of the value of the product exported to the United States. In January 1983, however, the U. S. Government again deprived their floriculture industries of the corrective benefits against unfair competition from imports by suspending the investigation. The ITA determined not to impose countervailing duties on the basis of a suspension agreement under which Colombian growers accounting for 85% of exports to the U. S. agreed to renounce the benefits they received under the CAT program.

The Colombian growers, however, have found ways to circumvent the obligations they assumed under the suspension agreement, raising a serious question of whether effective monitoring of thesuspension agreement is truly possible. In early 1984 it was learned that the Colombian government adopted another grower support program known as "CERTS." This program established support to Colombian growers for flower (rose) exports to countries other than the United States. By its very structure, and Colombia's existing exports to non-U. S. markets, we feel the Colombian grower now receives just as much support from his government as he did before the earlier 5% program was suspended.

Under the "CERT" program, Colombian growers are given a 25% subsidy for exports of roses and other cut flowers to countries other than the U. S. and only 1% for exports to the U. S. In addition to having the effect of providing Colombian growers with subsidy income equal to the old "CAT" program suspended by the ITA, they have circumvented U. S. countervailing duty trade laws and caused U. S. growers to lose market share in our only export market, Canada.

(iv) Subsidized roses from Mexico escaped the imposition of countervailing duties when the Commerce Department in 1984, under its so called "general availability" rule, refused to countervail the subsidies since they are also available to other Mexican horticultural sectors. Roses' appeal of that decision is presently pending before the Court of International Trade. That court, indeed, has recently overruled the Department's "general availability" rule in other cases and Roses anticipates a favorable ruling on its appeal. Nonetheless, subsidized Mexican roses continue to enter the United States and be liquidated without countervailing duties being imposed.

(c) Antidumping duty action.

In June, 1981, Roses Incorporated filed an antidumping duty petition against fresh cut roses from Colombia, based on an independent market research study and information gathered from the domestic growers and Department of Agriculture production statistics, and Department of Commerce import statistics. In June, 1981, Department of Commerce, after ex parte conferences with representatives of the Colombian Embassy and the Colombian growers, dismissed the petition without investigation. Roses Incorporated appealed the dismissal to the Court of International Trade, which in April, 1982, ruled that the Commerce Department acted unlawfully in refusing to investigate the alleged dumping of Colombian roses into the United States market. The Commerce Department appealed this decision to the Court of Appeals for the Federal Circuit. While the Court of Appeals ruled that the Court of International Trade could not order the agency to institute an investigation, it did affirm the decision by the Court of International Trade that the Commerce Department's dismissal of the petition was unwarranted. The Court of Appeals then provided Roses Inc. with the option of filing a new petition.

On September 30, 1983, Roses Incorporated filed a new antidumping duty petition. The Commerce Department International Trade Administration found dumping was taking place; however, on August 28, 1984, the International Trade Commission ruled in a final determination that the rose industry was not being injured, thus ending the investigation. This decision is now being appealed by Roses Incorporated in the U. S. Court of International Trade.

(d) Legislation

In the 97th, 98th, and 99th Sessions of Congress, bills have been introduced that would bring the U. S. duties on roses on to a comparable footing with those of the European Economic Community (EEC).

The bills were considered in hearings before the Senate Finance Committee on Trade and the House Ways and Means Subcommittee on International Trade, but failed to clear the appropriate subcommittees for floor action in the 97th and 98th Sessions.

Bill numbers in the 97th Congress were H. R. 6239 and S. 2466, and in the 98th Congress H. R. 1146 and S. 1296, and in the 99th Congress H. R. 1701.

(e) Petition to the United States Trade Representative (USTR) under Section 301 of the Trade Act of 1984.

During the summer of 1985, a 301 petition was developed alleging a wide range of unfair trade practices by major rose exporting countries. Preliminary copies of this petition were reviewed with USTR representatives and, following extensive revisions, was filed with the USTR on August 5, 1985.

The petition noted, among other things, that the advantage enjoyed by Dutch producers by the high EEC tariffs on rose imports is augmented by their government's provision of natural gas subsidies (a complaint also raised frequently by other EEC countries); that only the 301 remedy is available to counter Mexican government benefits conferred on roses since the agency had refused to countervail these benefits on the basis that other agricultural sectors also receive the benefit; that the Colombian export subsidy practices described above which unfairly distort trade have thus far not been addressed by the agency and are therefore best addressed in government-to-government negotiations; that Israel, in addition to subsidizing its rose production and exports, avoids the imposition of countervailing duties in the United States by transhipping its roses through European auctions; and that Guatemala, Dominican Republic and Costa Rica also subsidize their expanding rose industries.

The petition alleged that the effect of the unfair practices was to limit U. S. exports of fresh cut roses, and to increase imports to the U. S., both directly and as a result of diversion to the U. S. of third country exports.

The USTR determined not to initiate the investigation requested, stating several of the unfair practices had been terminated or found not to exist; some unfair practices had already been dealt with in countervailing investigations; many were not adequately supported by information; and, in several allegations, it was claimed we failed to show the burden to U. S. commerce, or the causal link between the practice and effect.

In the petition, Roses Inc. had brought together the best information available to us and within our financial means to produce, especially considering most of the pertinent proof is in the hands of those who would be the last to share it with us. Likewise, the USTR representatives met with, or had communications with, representatives from Colombia, Guatemala, and the Netherlands in which some alleged unfair practices were refuted without allowing Roses Inc. to comment or expand upon these issues.

10. Background on EEC and U. S. Rose Tariffs.

Section II, Chapter 6, Heading Number 06.03 of the Common External Tariff of the European Economic Community, specifies the rates of duty to be applied to imports of roses and other fresh cut flowers from outside the Community, as follows:

Heading Number	Description	Rate of Duty Autonomous	Conventional
06.03	Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed; bleached, impregnated or otherwise prepared:		
	A. Fresh:		
	I. From 1 June to 31 October	24	24
	II. From 1 November to 31 May	20	17
	B. Other:	20	--

The EEC refused to negotiate any concession on the rate applicable to fresh cut flowers in the most recently concluded (1979) Tokyo Round of trade agreement negotiations. In the preceding negotiations, the Kennedy Round, concluded in 1967, the EEC negotiated a binding at the full rate of the tariff applicable to imports during the principal growing season in Europe, June 1 to October 31; it granted only a 3%-point reduction from the 20% rate applicable to "off-season" imports (i.e., from 1 November to 31 May). The United States accepted this long-standing position of the EEC to grant no meaningful concessions on its external tariff on fresh cut flowers. The principal beneficiary of that policy is The Netherlands.

Contrast the action of the United States: it has reduced its full duty rate of 40% ad valorem to the level of 4% on miniature carnations, and to 8% on roses and other fresh cut flowers. The U. S. cut the tariff on fresh cut flowers by 15%-points in trade agreements with Canada and the United Kingdom, effective 1939; by an additional 12½%-points in the initial GATT negotiations, effective 1948; by an additional 2½% in the GATT (Dillon Round) of tariff negotiations, effective 1963; and by 6%-points on minature carnations, and 2%-points on roses and other fresh cut flowers in the Tokyo Round. During the life of the European Economic Community (1957 to the present) that body has refused to grant any concessions on fresh cut flowers, including roses, during its principal growing season, and only 3%-points for imports during the off season. Its tariff level of 24% for imports during its prime growing season is 300% of the U. S. rate.

Here's a comparison of tariff levels on roses around the world:

	1 June-31 Oct.	1 Nov.-31 May
*European Economic Community (EEC)	24%	17%
USA	8%	8%
USA - If Panetta bill, H. R. 1701 Revised, is passed	24%	17%
Canada	12½%	12½%
*Colombia	---	---
Japan	---	---

* In exporting to the EEC countries and Colombia, licenses are required. In the EEC licenses, both quantity and price are stipulated and may be revised by the issuing country after issue. In Colombia requirements that products received be in their national best interest, not available from home industries, and stipulations that dollars be available to pay for such imports, make it very unlikely that anyone could qualify for the Colombian permit.

The domestic rose greenhouse firms believe it is reasonable, equitable and just for the Congress to amend the U. S. tariff to provide customs treatment on U. S. imports of roses equivalent to that which the EEC - with the agreement of the United States - has insisted upon retaining for the protection of the fresh cut flower greenhouse industry in the European Community.

11. **Compensation may not be required if the proposed tariff legislation on roses is passed.**

The Congress is not deprived of its constitutional power to regulate foreign commerce by the membership of the United States in the General Agreement on Tariffs and Trade.

Article XXIII of the GATT obligates the United States only to "give sympathetic consideration to the representations or proposals" of any other member of the GATT which considers that any benefit to which it is entitled under GATT is being nullified or impaired by legislation, such as H. R. 1701, the proposed rose equity bill.

If "no satisfactory adjustment is effected" between the United States and such country, Article XXIII provides that "the matter may be referred to" the contracting parties of GATT for consideration. The contracting parties may authorize the affected country to suspend the application of tariff concessions of equivalent value to that which has been changed by the legislation enacted by the Congress. The GATT Council considers such complaints and appoints a panel of experts to study the complaints and report to the Council with recommendations for consideration of the parties when they fail to achieve a satisfactory settlement of the matter by bilateral discussions. Typically, these studies occupy long periods of time, and usually result in the countries concerned reaching some mutually satisfactory accommodation.

It is, therefore, by no means automatic or certain that the United States "would be obligated under the trading rules of the Agreement to grant compensation to supplier countries belonging to the GATT if duties on roses are raised." (Letter from Hon. William E. Brock, the United States Trade Representative, April 30, 1982, to Senator Daniel Patrick Moynihan).

The Committee on Finance, United States Senate, has discussed the criteria which should be applied when the United States has increased tariffs under the escape clause. The same criteria should apply when the United States increases tariff through legislative action.

> "It is not intended that this section be interpreted as requiring the payment of compensation whenever import relief has been granted pursuant to section 203 or requiring that a foreign country be precluded from compensation if it has taken action pursuant to Article XIX (the escape clause in GATT) without extending compensatory concessions to the United States. The GATT provides that countries seeking compensation must show that they have been adversely affected, and it is expecied that no action would be taken under this section until such a showing has been made." (S. Rep. 93-1298, p. 10).

Even if the United States were to decide to grant compensation to a country claiming to be harmed by the enactment of the roses tariff legislation, it by no means follows that other U. S. domestic interests would be harmed. The Trade Act of 1974 requires that the effect upon domestic industry, workers and communities of particular tariff concessions selected for consideration must be evaluated by the International Trade Commission and an inter-agency panel under the Office of the Trade Representative. (Sections 131, 132, 133, and 134, Trade Act of 1974). Thus, the Executive Branch has the opportunity, and obligation, to select tariff items for compensation which will not involve probable economic injury to domestic interests.

Roses are a floricultural crop, and part of the agricultural economy of the United States. The Court of International Trade has ruled that especially in the area of agricultural trade, the Congress is quite free to enact import regulation legislation free from any restraint claimed to be imposed by the General Agreement on Tariffs and Trade. In Farrman and Co. Inc., and the National Sugar Refining Company v. The United States, Slip Op. 82-61, July 26, 1982, the Court described the powers of the Congress and of the President in this context as follows:

> "The steadily increasing sentiment for the full protection of domestic agricultural commodities from price depression and fluctuations caused by foreign imports culminated in the enactment of the amendment to subsection (f) of the section 22 (of the Agricultural Adjustment Act of 1933, as amended) under date of June 16, 1951. * * *.
>
> "This court is fully satisfied that the amendments to section 22, as well as their legislative history, clearly evidence the intent of Congress that the powers delegated to the President therein be neither diminished nor contravened by the provisions of any treaty or trade agreement between the United States and Argentina or the provisions of the General Agreement on Tariffs and Trade. The amendments to subsections (c) and (f) of section 22 were enacted subsequent to the treaty and the trade agreements between the United States and Argentina, and therefore prevail in matters concerning which a conflict might exist. * * *. The President's exercise of the powers so delegated to him was not in violation of, and in fact superseded, the most-favored-nation provisions contained in the treaty and any international agreement between the United States and Argentina or in the General Agreement on Tariffs and Trade." (Slip. Op. 82-61, pp. 15, 18).

12. Observations about U. S. Trade Laws

A pattern seems to emerge from our years of effort to gain a fair marketplace. First, we would identify a problem area, gather facts, and file a petition with the appropriate agency. Not always on the first try would a petition be accepted. Once accepted, the association would then need to provide extensive added information, have members testify, and in some cases, members were required to complete very extensive questionnaires.

As a rule, no relief would be granted, or it would be very small. An analysis of the case and ruling would then be conducted by the association and its counsel. This often revealed points of handling, or law, that would appear improper, and we would appeal to the U. S. Court of International Trade for further consideration. In a number of cases, the Courts would find in favor of Roses, and remand segments back to the involved agency for further action.

As we discussed our problems with legislators along the way, we were constantly told that we should seek relief under existing U. S. trade laws, rather than pursue legislation to solve the problem. We followed this advice initiating many cases, but with very little success.

Regardless of the outcome of our efforts the procedure drained considerable time and assets of the association, allowed continued loss of market share to the importers, and seldom brought meaningful results for roses.

There is serious question as to this system and if it operates as intended by Congress. Clearly, for a small industry of perishable commodity growers, the system does not work and brings us ultimately back to Congress, asking for a legislative answer after exhausting traditional remedies within existing laws.

Clearly, we are now more impacted by imports and can only hope that our case will be given prompt and proper consideration by members of Congress.

13. **The Future.**

The rose industry, through its trade association, Roses Inc., has appealed to agencies of the U. S. Government in every way within our means, SEEKING RELIEF FROM SUBSIDIZED IMPORTS!!!!!

We have appealed through 201 Escape Clause actions, an antidumping case, multiple countervailing duty actions, and, finally, a 301 case before the United States Trade Representative. Also, in the 97th, 98th and 99th Sessions of Congress, we have asked for favorable consideration of legislation that would bring U. S. duties on roses to a comparable footing with the EEC.

Clearly, the industry has made a magnificent effort to bring about a fair marketplace for roses, and for its size, has been more forceful and effective than any other group of which we are aware.

However, the results have been very limited. Imports continue to pour into the U. S., and each year the U. S. rose grower continues to lose 3% to 5% of its market share!

The above summary of actions does clearly outline our efforts, and we feel you will agree that we have been diligent in our efforts to seek relief, but, as described, we have seldom found the trade laws offered by Congress able to provide us much help.

At present, the total cut flower industry is seriously impacted by imports. The other main cut flowers, carnations and pompon chrysanthemums, are now at a point where over 80% of these crops sold in the U. S. come from offshore production facilities, and hundreds of growers have been forced out of business.

Clearly, the U. S. rose grower can expect the same fate unless some practical answers are found soon!!!!

Our last hope for action on the administrative side was the 301 petition entered late last year with the U. S. Trade Representative. After preliminary investigation, which included communications and meetings by USTR representatives with Colombian and Dutch representatives that we were not allowed to comment on, the USTR declined to accept our petition!!!!

The loss of this action, combined with the clear signs that there is an oversupply of roses in the market, seriously clouds the domestic grower's future. This leads us to seek support of trade legislation as our only hope of gaining a fair marketplace.

A copy of a recent bill introduced by Congressman Leon Panetta (D-16th-CA) is attached. We believe this bill, H. R. 1701, would clearly help the U. S. rose grower attain a level playing field by establishing tariffs such as those held by the European Economic Community.

Your support of this bill is very much needed, and we do hope you will let us hear your views on this important matter in the very near future.

Mr. STEWART. Thank you, Mr. Chairman.

I turn now to the subject of the reform of the antidumping and countervailing duty laws. Please understand, Mr. Chairman and members of the committee, the problems that exist in the administration of the antidumping and countervailing duty laws and in section 301 of the act are problems that flow not from the way the statutes are presently worded, but from the manner in which the administrators exercise the discretion given to them by the Congress. They have a range of choices to make in interpreting the law.

Uniformly they make choices that favor foreign interests and penalize domestic interests.

From my experience on behalf of these three clients and my 35 years experience, I can affirm that that is the fact. We make a series of proposals for amendments which would limit that damaging exercise of discretion.

The first pertains to a mysterious term, exporter sales price, abbreviated as ESP. In determining whether there is dumping, Mr. Chairman, the Commerce Department must compare the home market price of an article with the export price. If the export price is lower, there is a margin of dumping that can be corrected.

However, when the foreign producer or exporter is related to the United States importer, as is in the case of roses and other flowers from Colombia and many commodities from Japan, the law wisely indicates that the transfer price between related parties should not be used as the price to compare with the home market price.

Instead, it defines the price to be used, and it is called exporters sales price. The theory of that price is that the Commerce Department will look at the first resale of the imported article in the United States by the related party, and subtract from that resale price, which is an arm's length price in the U.S. market, the things added on by the importer, such as the ocean freight, insurance, selling expenses, general expenses, and commissions.

There are three problems connected with the way the exporter sales price is determined, and in our full statement we offer language to correct each of the three.

The first is in order to determine the exporter's sales price, there is deducted from the resale price the add-ons, the general selling expenses. The result is to achieve a proxy for an arm's length price from the foreign producer to the importer. That should be compared with the home market price.

However, the Commerce Department subtracts the same amount from the foreign market price as it subtracted from the resale price in the United States to determine the proxy of an arm's length price.

This has the result of reducing the dumping margins and removing the intended protection.

The second problem concerns the matter of profit. Because the related party importer resells the merchandise after it is imported into the U.S. market, that resale price includes his addition for profit. In order to adjust that resale price back to a constructed arm's length price, the profits should be deducted.

It is, under the International Anti-Dumping Code by the European Community, by Canada and by Australia, and I can add the de-

duction is also provided for in the regulations in Japan. The Commerce Department declines to deduct that addition for profit, even though our trading partners do so.

This has the effect of again minimizing the dumping margin, removing the protection intended by the Congress, and places our industries in an unequal position with industries in other countries who are protected by dumping by their governments.

So our second amendment proposes to require the subtraction of profit in harmony with the International Anti-Dumping Code.

The third amendment pertaining to the Anti-Dumping Act is the matter of transshipments. At the present time—and this is especially true for Japanese merchandise—when there is an antidumping proceeding or an antidumping order, merchandise will be exported from Japan to some third country where it will then be transshipped into the United States or given a moderate amount of processing that does not amount to a substantial transformation, and that product then comes in to the United States.

On behalf of Bomont Industries, for whom we now have an ongoing antidumping investigation, we have presented the facts of the transshipment of Japanese nylon impression fabric through Germany where it is slit and sent into the United States, or where it is slit and inked and sent into the United States. The U.S. Customs regulations adopted to prevent evasion of the textile—multifiber textile arrangement and the quotas established thereunder clearly holds that unless there is substantial transformation, moving a product to a third country does not remove it from the scope of the law intended to protect American industry.

Yet the Commerce Department refuses to include transshipped merchandise in its antidumping investigations. That is our third recommended amendment.

Mr. Chairman, am I transgressing on the intended amount of time?

Mr. PEASE. Well, it would be helpful if you are about finished, but if you need another minute or two to wrap up, go ahead.

Mr. STEWART. I will try to conclude in 2 minutes, Mr. Chairman. Thank you.

The fourth problem relates to downstream dumping. At the present time a producer in Japan, for example, of manufactured machinery will purchase articles such as tapered roller bearings or steel at a price within Japan that is below the fair value of that material, incorporate it into a product to be exported to the United States. The antidumping laws will only apply to the finished article, like automobiles that come into the United States, but will not remove the depressing price effects of the dumping of the raw materials used by the automobile manufacturer that are sold to him at a dumping price to facilitate his exports.

We therefore are recommending a change in the law, the text of which is in our prepared statement to eliminate downstream dumping.

We have one final comment, and that is in regard to section 301. That remedy which gives the President the power, after investigation by the Special Trade Representative, to neutralize a whole variety of unfair practices burdening commerce, is initially administered by the Special Trade Representative. On behalf of Roses, Inc.,

we presented a comprehensive petition under section 301, very comprehensive, very detailed, and supported by elaborate factual information. Because we lack political power, we are not mighty and powerful like semiconductors and steel and textiles, the USTR declined to investigate the practices that we identified, in which many foreign countries burden our commerce in fresh cut roses.

The reason given for refusing even to investigate was that we had not presented all of the facts that the USTR thought might be available. That is an unfair test for them to use. The very purpose of his power to investigate is because of the unique nature of governmental practices and documentation. It takes the U.S. Government through the Trade Representative to develop the facts. We offer an amendment on that point.

I thank you for your patience and consideration, Mr. Chairman.

[The prepared statement follows:]

Statement of Eugene L. Stewart, Special Counsel, On Behalf Of Roses Inc., The Floral Trade Council, and Bomont Industries, Inc. Proposing Trade Reform Legislation April 10, 1986

Roses Inc., The Floral Trade Council, and Bomont Industries, Inc. respectfully request that the trade laws of the United States be amended in accordance with the following comments and proposals.

I. THE ITA GREATLY REDUCES OR ELIMINATES DUMPING MARGINS AND DEFEATS THE CONGRESSIONAL INTENT UNDERLYING THE EXPORTER SALES PRICE (ESP) CALCULATION APPLICABLE IN ANTIDUMPING INVESTIGATIONS WHERE IMPORTER AND EXPORTER ARE RELATED: (1) BY IMPROPERLY REDUCING THE FOREIGN MARKET PRICE UNDER ITS "ESP OFFSET" AND (2) BY FAILING TO DEDUCT THE IMPORTER'S PROFITS ON RESALE WHEN PERFORMING ITS ESP CALCULATION. ACHIEVING THE PURPOSE OF ESP REQUIRES THE ELIMINATION OF THESE PRACTICES.

A. Introduction

Margins of dumping under U.S. antidumping law are computed by comparing the "United States price" of imported merchandise to the "foreign market value" of the merchandise. When the importer is not related to the foreign producer or exporter the United States price is the actual "purchase price" paid by the importer. Congress directs that the actual purchase price not be employed, however, when the importer is related to the foreign exporter, as that price may not reflect the true market value. (An artificially inflated transfer price between a related exporter and importer, for example, could conceal dumping margins.) In

instances where the U.S. importer is related to the foreign exporter, therefore, the law directs the administering authority to derive a proxy for what would have been the "purchase price" had the importation been between unrelated parties. This proxy is called the "exporter's sales price" (ESP).

The Congress intended that ESP be derived by taking the resale price paid by the first unrelated U.S. purchaser, and subtracting from the resale price the importer/reseller's selling and general expenses, including commissions (and their equivalent, profits) included by the importer in his resale price. Although the resale to the unrelated party represents the first transaction presumptively based on market forces, the additional expenses incurred by the importer to accomplish the resale, and the commissions paid and profits earned on the resale, are in no way related to the importation price for which ESP is a proxy. The law intends that, through the deductions, the second generation sale (the resale) will be turned into an approximation of what would have been the first sale (the importation) had it been an arm's-length transaction between unrelated parties.

As discussed following, the methodology employed by the ITA with respect to the ESP provision defeats the intent of Congress that through the ESP calculation the inherently suspect character of the related party importations be eliminated. The Congressional intent is defeated, first, by the ITA's treating the arm's-length foreign home-market price with which the ESP arm's-length proxy price is compared as though it too were a related party transaction requiring deductions to yield a proxy price.

The ITA's deducting from the foreign side of the equation the indirect selling expenses incurred in making the foreign market sale has no basis in the ESP provision which is directed only at the U.S. price side of the equation and intended simply to replace the related party transaction price with a more trustworthy proxy.

The intent of Congress is also defeated by the failure of the ITA in calculating the ESP to back out of the resale price to the first unrelated purchaser all factors which relate only to the resale, and not to the importation transaction. Namely, the ITA does not deduct the profits earned by the related U.S. importer on the resale transaction, thereby overstating the United States price.

As a result of its "ESP offset" in the foreign market, and its failure to deduct profits in deriving United States price under the ESP methodology, the ITA creates a disparity between the unrelated importer, "purchase price" situation, and the related importer, "ESP" situation, and greatly reduces or eliminates margins of dumping in the latter. Although Congress intended through the exporter's sales price (ESP) to eliminate any advantage which the related parties might enjoy under U.S. antidumping duty law, the manner in which the ITA applies the ESP provision confers an advantage on related-party importers.

Indeed, the ITA's practices would make resort to the actual price paid by the related importer, and accepted as reliable by Customs (under 19 U.S.C. § 1401a(b)(B), for example) a more acceptable basis for determining margins of dumping than ESP. In that case, the U.S. price would not include profits the importer will earn on resale, and indirect

selling expenses would not be deducted from the foreign market price.

The ITA's current practice severely reduces the chances of domestic industries obtaining adequate protection in situations where the importer is related to the foreign producer. This problem has been exacerbated in recent years. Foreign producers find it increasingly effective to set up assembly in the U.S., or acquire their own distribution facilities in the U.S. See, e.g. Harvard Business Review, March-April 1986, at 78. Examples are U.S. importer distributors of roses and other cut flowers in Miami owned by Colombian flower growers and a host of Japanese product producers who have established U.S. sales and assemby affilitate. In these circumstances, the number of U.S. firms related to foreign firms has multiplied, thereby increasing the likelihood that antidumping duties will be reduced more frequently by application of the ESP provision as presently interpreted by the ITA.

B. The ESP Offset

(i) The "ESP Offset" Defeats the Intent of Congress

Whenever the United States price is derived under the ESP methodology (i.e., whenever the U.S. importer is related to the foreign exporter), in addition to making deductions from the U.S. resale price, the administering authority (ITA), under its interpretation of ESP, also deducts indirect selling expenses from the foreign sales price. It is this irrational reduction of foreign market value, called the "ESP offset," which Roses Inc., the Floral Trade Council and Bomont Industries, Inc. ask Congress expressly to forbid as inconsistent with the purpose underlying its ESP legislation.

In an apparent misunderstanding of what Congress intended it to accomplish when using ESP rather than "purchase price" in related-partyimportations, the ITA argues that because deductions are made from the U.S.-price side of the equation, it must make similar deductions from the foreign-market-price side of the equation: "Not to take into account any indirect selling expenses incurred on behalf of foreign market sales would be patently unfair, as it would result in the comparison of incomparable prices." U.S. Department of Commerce Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change in Accordance with Section 624 of the Trade and Tariff Act of 1984 (November 1985) at 58. This argument, however, ignores that the deductions from the U.S. resale price are made to turn the resale price in the United States into a proxy for a first generation sale (importation) price. The foreign sale price, on the other hand, is already a first generation sale price. Hence, it is the deduction of indirect selling expenses from the foreign market sales price that results in a patently unfair comparison of incomparable prices, not the failure to deduct those expenses from the foreign side of the equation.

The effect of the ITA's "ESP offset" is that foreign market value is understated and, consequently, margins of dumping in the U.S. are also understated. Just as the ITA does not deduct indirect selling expenses from the foreign market value when United States price is based on an unrelated importer's "purchase price," there is no basis for its doing so when the United States price is based upon "exporter's sales price," a proxy for "purchase price" in a related-party importation.

The irrationality of the "ESP offset" was brought to the attention of this Committee in 1983 by a number of U.S. corporations, including Roses Inc., one of the parties on whose behalf the present statement and proposals are made. Options to Improve the Trade Remedy Laws: Hearings Before the Subcomm. on Trade of the House Committee on Ways and Means, Part 2, 98th Cong., 1st Sess. 610-844 (1983) (Statement of Terence P. Stewart, Special Counsel, American Spring Wire Corp., Carlisle Tire & Rubber Co., Florida Wire & Cable Co., PPG Industries, Inc. [Glass Division], Roses Inc., SCM Corp. [Consumer Products Division], and The Timken Co.) With respect to the "ESP offset" the statement emphasized that, under the ITA's "ESP offset" methodology, "[d]omestic producers face an extraordinary situation where a foreign competitor sells in the United States through a related company as opposed to an unrelated importer." Id. at 677. That is, only in the related-party importation situation are indirect expenses deducted from the foreign market price. Through concrete illustrations, the 1983 statement showed how, in spite of the intent of Congress to the contrary, importers related to the foreign exporter receive more favorable treatment under the ITA's view of the antidumping laws than do unrelated importers. Id. at 680-83. The statement noted, moreover, that the ITA's deduction of indirect expenses from the home market price as an adjustment for differences in circumstances of sale is in conflict with the clearly expressed intent of Congress that only expenses directly related to the sale under investigation be permitted. Id. at 679-80.

(ii) Court Decisions and Comments on the "ESP Offset"

The "ESP offset" issue has long been debated before the ITA and the courts. In 1983 the Court of Appeals for the Federal Circuit upheld the "ESP offset" as within the broad discretion of the ITA, Smith Corona Group v. U.S., 713 F.2d 1568 (1983), cert denied, 104 S. Ct. 1274 (1984) ("The offset issue was not addressed substantively in the Trade Agreements Act of 1979. The legislative history does contain general statements to the effect that the Secretary should be both firm and fair. Yet, these generalities are not helpful in determining the validity of the offset." Id. at 1579.) A statement, admittedly dictum, in a recent decision of the Court of International Trade, however, while recognizing the decision in Smith Corona as controlling, challenges the wisdom of that decision and the validity of the "ESP offset" with the following analysis:

> The removal of selling expenses from the U.S. side of the equation is essential to finding a fair U.S. price. The related exporter is told that its price is actually the next transaction price of its related importer, but only after those elements are removed which would not be in the exporter's price in a transaction with the importer. If that exporter is then allowed to deduct from his home market price an equivalent element of selling expenses the entire special statutory method is being negated. In short, the "offset" restores an element of one of the very items that Congress wanted to remove from U.S. price in related transactions.

Zenith Corp. v. U.S., 9 CIT___, 606 F. Supp. 695 (1985), Affirmed Feb. 10, 1986, CAFC Appeal Nos. 85-2246 and 85-2286.

(iii) Proposed Reform to Eliminate the ITA's "ESP Offset" Practice

To assure that the ITA execute the ESP methodology mandated by

Congress so as not to restore "an element of one of the very items that Congress wanted to remove from U.S. price in related transactions" (Zenith, supra), we respectfully request that Congress amend Section773(a)(4) to expressly prohibit the ITA from applying its "ESP offset." To this end, we propose that 773(a)(4) be amended to add the following at the end of subsection (4):

> "except that in no event shall the administering authority deduct indirect selling expenses from foreign market value in order to offset expenses deducted from exporter's sales prices under section 772(e)."

C. The ITA Improperly Fails to Deduct the Importer's Profits on Resale in its Calculation of ESP and Hence Does Not Fully Return the Transaction to the Importation Level

(i) The Agency's ESP Practice with Respect to the Importer's Profits Earned on Resale

Not only does the agency's interpretation of the ESP methodology result in an understatement of foreign market value (see discussion of "ESP offset" supra), it also results in an overstatement of United States price by failing to remove from the resale price all the factors not related to the original importation. Specifically, in deriving the ESP the ITA does not deduct from the U.S. resale price the profits which the importer earns on that resale. By including the importer's profit on resale, the agency does not fully transform the resale price into a reasonable proxy for the price that would have been paid by the importer in an arm's-length transaction. That is, the price is not fully returned to the initial importation level. Not only does this practice result in an inaccurate proxy, it is also in conflict with the International Antidumping Code and to the practice of our major trading partners, all

of which provide for the deduction of profits in deriving the ESP or its equivalent in related-party importations. As with the "ESP offset," the ITA's failure to deduct the importer's profits on resale results in the ESP basis for determining United States price being more favorable for the foreign interests and their related importers.

The trade bar representing exclusively or primarily foreign interests recognize this clear anomaly. See, e.g. Hemmendinger and Barringer, The Defense of Antidumping and Countervailing Duty Investigations Under the Trade Agreements Act of 1979, 6 N.C.J. Int'l L. & Com. Reg. 427, 433-34 (1981) (for the foreign manufacturer, ESP "often is a more favorable basis of calculating fair value because, unlike purchase price, the profit of the U.S. importer is included in the net adjusted price, resulting in a higher United States price").

Among the items which are to be backed out of the U.S. resale price to derive ESP under Section 772 of the Act (and under the predecessor ESP provisions since the 1921 Act) are any "commissions" earned by the importer in the resale transaction. Under the administering authority's interpretation of the word "commissions," those profits which are not characterized as or paid in the form of "commissions" per se will not be deducted from the resale price.

(ii) The ITA's Failure to Deduct Profits in its Construction of ESP is Inconsistent with the International Antidumping Code, Approved and Implemented in the 1979 Act.

The ITA's approach is inconsistent with the International Antidumping Code approved and implemented, together with other trade agreements, by passage of the 1979 Trade Agreements Act (1979 Act), which

repealed the 1921 Antidumping Act. The International Code provides that where an export price may be unreliable because of an association between the exporter and importer, an export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer. When export price is so constructed, "allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made." International Antidumping Code, art. 2, paras. 5-6. In other words, the Code indicates that "profits accruing" should be deducted from the resale price to secure a constructed export price that is the analogue of ESP.

Emphasizing the statutory language, the Court of International Trade recently affirmed the administering authority's interpretation of the word "commissions" as employed in the predecessor to section 772 in the 1979 Act (section 204 of the 1921 Act) as meaning only those profits which are given in the form of a commission, not profits in general. The Timken Company v. United States, 10 CIT ___, Slip. Op. 86-17 at 41 (February 20, 1986). The court, however, did note that the effect of this distinction is to confer favorable treatment on foreign manufacturers when the first sale is between related parties and, thus, when the ESP approach is followed. Id. at 40, citing Hemmendinger and Barringer, supra. The court in Timken also noted that its decision did not address the meaning of section 772 of the 1979 Act, but was limited to interpreting section 204 of the 1921 Act. The court in Timken expressly stated that it was not, therefore, deciding whether profits must be deducted under 772. Congress has expressed its intention that

the 1979 Act is "consistent" with the International Code. See S. Rep. No. 249, 96th Cong., 1st Sess. 1, 15-16.

In light of the intended consistency between section 772 and the International Antidumping Code, and in light of the ITA's interpretation of "commissions" as not including "profits," an amendment expressly to bring section 772 into conformity with the Code is necessary.

(iii) The ITA's Failure to Deduct Profits in its Construction of ESP is Inconsistent With the Practice of our Trading Partners

Consistent with these international arrangements, our major trading partners all deduct a reasonable profit margin from the sales price to an unrelated purchaser to arrive at a proper point of comparison. The European Communities, Canada and Australia represent significant examples. For instance, in arriving at the proper point of comparison with respect to roller bearings from Japan, the Commission for the European Communities deducted "a reasonable profit margin of 6%." Comm. Reg. (EEC) No. 81/406, O.J. Eur. Comm. (No. L 152) 44-46 (1981). Similarly, the EC deducted profits from the export value in its antidumping determination with respect to electronic typewriters from Japan. Comm. Reg. (EEC) No. 3643/84, 27 O.J. Eur. Comm. (No. L 335) 43, 46 (1984). With respect to this practice in Australia and Canada, see section 4A(iii) of the Australian Customs Tariff Act of 1975 (No. 76 of 1975), as amended by the Customs Tariff Act of 1981 (No. 66 of 1981), and Section 10(2)(c)(ii) of the Canadian Anti-Dumping Act.

By deducting the related U.S. party's profits from the resale price to an unrelated customer, our trading partners recognize that it is

essential to do so in order to derive an export value which as closely as possible approximates the f.o.b. foreign port-of-origin price to an unrelated party. The U.S. law, as interpreted by the administering authority, is unique in its failure to deduct profits in arriving at a proxy for an arm's-length price.

In the Commerce Department Study dated November 1985, cited supra, the Department states that:

> Recently, it was brought to our attention that some of our trading partners do make a deduction for profit in ESP situations. As a result, in consultation with those partners, we are now undertaking a further review of this issue.

Id. at 59-60. It is astounding that Commerce claims to have only "recently" learned about the practice of our trading partners to deduct profits in their analogues of our ESP. Indeed, in a brief submitted to the ITA dated July 24, 1981, in the investigation of tapered roller bearings from Japan it was noted that the EEC, in its antidumping investigation against the same product, had deducted profits. Tapered Roller Bearings and Certain Component Parts Thereof From Japan, Posthearing Brief on Behalf of the Timken Company (Part 2) (July 24, 1981). Since that time the ITA has repeatedly been reminded of the discrepancy between the ITA's practice and that of our trading partners. Moreover, the ITA, since assuming responsibility for the administration of U.S. antidumping and countervailing duty laws in early 1980, has always had top officials serving on the GATT Committee on Anti-Dumping Practices. The ITA, therefore, from its inception has been aware of the terms of the code and, by implication, the practices of our trading

partners also participating on the GATT Committee. Indeed, John Greenwald who actively participated in negotiating the Antidumping Code subsequently became the first Deputy Assistant Secretary of the ITA responsible for administering the code. His successors, Gary Horlick and Alan Holmer, also served on the GATT Committee, as did Richard Self, Director of the Office of the Assistant Secretary for Import Administration; Lynn J. Barden, Assistant General Counsel for Import Administration; Robert Seely, Attorney, Office of General Counsel; Christopher Parlin, Director, Office of Policy, and Stephen J. Powell, Assistant General Counsel. The claim of having only recently become aware of a practice divergent from ours in other countries is, therefore, astounding.

(iv) Proposed Reform

In light of the Court's determination in Timken, finding that the administering authority properly interprets "commissions" as not including profits, an act of Congress is necessary to provide for the deduction of profits from the unrelated customer price to eliminate the anomalous result noted by the court in Timken: "ESP 'often is a more favorable basis of calculating fair value because, unlike purchase price, the profit of the U.S. importer is included in the net adjusted price, resulting in a higher United States price.'" See supra.

The following proposed change to section 772 of the Act (19 U.S.C. 1677b) would require the administering authority, in calculating the exporter's sales price, to deduct from the ESP any profits earned by the related-party U.S. importer in order to arrive at a more accurate

proxy for the price between the foreign manufacturer and an unrelated buyer in the United States.

> (e) Additional Adjustments to Exporter's Sales Price.--for purposes of this section, the exporter's sales price shall also be adjusted by being reduced by the amount of--
>
> (1) commissions for selling in the United States the particular merchandise under consideration,
>
> (2) profits earned by a related party importer after importation of the merchandise on resale of the particular merchandise in the United States, or if not so earned, a reasonable profit not less than 8% of net sales,
>
> (3) expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and
>
> (4) any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after the importation of the merchandise and before its sale to a person who is not the exporter of the merchandise.

II. TRANSSHIPMENTS

A. Current ITA Practice

Foreign exporters often sell their product to another exporter in an intermediate country, where it undergoes minor processing, after which the product is "transshipped" to the United States market. Under its current investigation methodology the ITA will not consider transshipped products. The ITA considers these products as exported by the intermediate country, and not by the country of manufacture. Thus, by the simple expedient of postponing minor final processing, the

original manufacturer-exporter is able to avoid the full impact of the U.S. antidumping or countervailing law.

B. The Need to Clarify ITA's Role in the Event of Transshipments

Congress intended that the ITA address the issue of transshipments through the adoption of the "substantial transformation rule." Under this rule, universally applied by the Customs Service under its regulations and under judicial interpretation, merchandise which has undergone only minor processing should still be considered as originating from the country where it was manufactured. Present customs regulations specifically state the principles to be used in determining whether a product has been "substantially transformed." 19 C.F.R. § 12.130. Under these rules, for instance, cutting or dyeing a fabric would not result in a substantial transformation.

The ITA, however, despite the acceptance of the rule by the Customs Service, has indicate that it may not apply the same principles in its antidumping investigations even though Congress, in the Trade and Tariff Act of 1984, specifically affirmed the application of the rule in antidumping duty law. At that time, Section 773 of the Tariff Act of 1930, 19 U.S.C. 1677(b), was amended to oblige the ITA to consider a product as manufactured in the intermediate country, even though there had been no substantial transformation, where the original manufacturer did not know at the time he sold the product that the product ultimately was destined for the U.S. market:

> (g) Exportation from an Intermediate Country.--If--
>
> (1) a reseller purchases the merchandise from the manufacturer or producer of the

> merchandise,
>
> (2) the manufacturer or producer of the merchandise does not know (at the time of the sale to such reseller) the country to which such reseller intends to export the merchandise,
>
> (3) the merchandise is exported by, or on behalf of, such reseller to a country other than the United States,
>
> (4) the merchandise enters the commerce of such country but is not substantially transformed in such country, and
>
> (5) the merchandise is subsequently exported to the United States,
>
> such country shall be treated, for purposes of this section, as the country from which the merchandise was exported.

19 U.S.C. § 1677b(g) (emphasis added).

In the light of these clear instructions from Congress, it would seem only obvious that in cases where the original manufacturer knows that his product was ultimately destined for export, and there was no substantial transformation, the transshipped product should be regarded as exported from the country of manufacture. It would also seem obvious that Congress wanted the ITA to apply the substantial transformation rule, and indeed assumed that the ITA had been doing so in the past. Not necessarily so, however, in the eyes of the administration.

Recently, in the course of the investigation on impression fabrics from Japan, domestic industry petitioners argued this very issue before the ITA. Inexplicably, however, the ITA has not yet committed itself to consider transshipped products in that investigation.

C. Proposed Reform

In light of the ITA's apparent reluctance to heed the intent and the specific instructions emanating from Congress, we respectfully propose that section 773(g) of the Tariff Act of 1930, 19 U.S.C. § 1677b(g), be deleted and that a new section 780, 19 U.S.C. § 1677i, be added, reading as follows:

> Sec. 780. EXPORTATION FROM AN INTERMEDIATE COUNTRY
>
> -- If --
>
> (a) a manufacturer or producer of the product under investigation sells the product knowing it will be exported, and
>
> (b) the product undergoes further processing in the second country, before being transshipped to the United States, and
>
> (c) such processing does not substantially transform the product, as determined under the regulations of the U.S. Customs Service, and
>
> the merchandise, for purposes of the investigation, will be regarded as exported from the first country of manufacture.

III. DOWNSTREAM DUMPING

A. Issues

Presently the ITA will not find dumping where the foreign product incorporates inputs that were themselves dumped. Thus, when a foreign exporter purchases inputs from a third country at prices that reflect dumping by the third country exporter, he is able to pass on the unfair cost savings to his U.S. sales. This practice is commonly called downstream dumping, and was addressed in the Trade Remedies Reform Act of 1984. The downstream dumping provisions were dropped in conference,

however.

In addition, the ITA in its current practice ignores the effect of dumping where the dumped product has been incorporated in another product manufactured in the same country that is not the subject of investigation. Thus, a foreign manufacturer who is under investigation for dumping, or against whom a dumping order is outstanding, is nevertheless able to penetrate the U.S. market by the simple device of incorporating his product in a second product not under investigation.

Circumvention of antidumping duties is not the only effect of this practice, however. Incorporation of the product under investigation into a second product not covered by the investigation also often results in lower dumping duties on the product that is covered by the investigation. An example will clarify this effect. Foreign exporter A is under investigation for dumping a product x. He is able to partly avoid the effect of the investigation by selling his product to foreign exporter B, who incorporates the product in a new product y, which is subsequently exported to the U.S. Thus, notwithstanding the dumping investigation, product x penetrates the U.S. market, displacing domestic producers of the like product. This is the circumvention effect mentioned above. However, the ITA, when determining the foreign market value of product x, will now look at the sale between exporter A and exporter B as a home market sale, and use this to determine the foreign market value of product x. Obviously it will find the transaction price to be very low, resulting in low dumping margins (or no margins at all) for product x under investigation. Thus, the foreign exporter is able to

avoid the effects of the U.S. antidumping law on two levels: notwithstanding an eventual duty he is able to penetrate the U.S. market by the simple expedient of incorporating his product in a third product, and the duty on his product is drastically lowered or completely avoided because he was able to establish a significantly lower foreign market value.

B. Proposed Reform

To address the practice whereby a foreign exporter purchases inputs from a third country at prices that reflect dumping by the third country exporter, and is able to pass on the unfair cost savings to his U.S. sales, we generally support the downstream dumping provisions passed by the House in 1984 (H.R. 4784). As proposed, when a product that is subject to an antidumping or countervailing duty investigation includes materials or components which (1) are dumped (i.e. sold below their foreign market value); and (2) the dumped component price is lower than the generally available price of that input in the country of manufacture of the end product (adjusted to offset artificial price depression due to dumping or subsidies); and (3) the cost of the dumped product exceeds 2.5 % of the total cost of manufacturing or producing the merchandise in question, then the ITA must include an amount attributable to that downstream dumping as part of its calculation of any countervailing or dumping duty on the final product. The downstream dumping margin must be calculated as the difference between the purchase price of the component, and the adjusted generally available price. The proposed language differs from the language in the house bill only in that it imposes a

statutory standard to determine whether the effect of downstream dumping is significant enough to warrant an investigation.

To address the practice where the dumped product has been incorporated in another product that is not the subject of investigation we support additional revisions that would require the ITA to impose special antidumping duties on the second product as well, to offset the unfair competitive advantage this product has because of the inclusion of the dumped article. In addition the ITA would be required to disregard home market sales of the product under investigation for incorporation in another product that is ultimately destined for the U.S. market as well. These rules would only apply where the input product has substantially maintained its identity, and where the foreign manufacturer who offered the product for incorporation into another product knew that the latter was ultimately destined for the U.S. market.

To that end we propose that the following be inserted after the current section 771A:

Sec. 771B. Special Dumping Practices

(a) Downstream Dumping

(1) DEFINITION. -- Downstream dumping occurs when --

(A) a product that is used in the manufacture or production of merchandise subject to investigation under Subtitle A or B is purchased at a price that is below its foreign market value (as determined under Subtitle B without regard to this subsection), and

(B) that purchase price --

(i) is lower than the generally available price of the product in the country of manufacture or production, or

(ii) if the generally available price of the product in the country of manufacture or

production is artificially depressed by reason of any subsidy or other sales at below foreign market value, is lower than the price at which the product would be generally available in such country but for such depression, and

(C) the cost of the dumped input product exceeds 2.5% of the total cost of manufacturing or producing the merchandise under investigation.

(2) INCLUSION OF AMOUNT ATTRIBUTABLE TO DOWNSTREAM DUMPING. -- If the administering authority decides, during the course of an investigation under subtitle A or B, that downstream dumping is occurring, or has occurred, with respect to any product used in the manufacture or production of the merchandise under investigation, the administering authority, in calculating the amount of any countervailing duty or antidumping duty on such merchandise, shall include an amount equal to the difference between the purchase price of the input and either (A) the generally available price, referred to in paragraph (1)(B)(i), or (B) the price referred to in paragraph (1)(B)(ii), of the product that would pertain but for the artificial depression, whichever is appropriate.

(3) SCOPE OF INQUIRY BY ADMINISTERING AUTHORITY -- The administering authority is not required, in undertaking an investigation under Subtitle A or B, to inquire regarding the presence of downstream dumping, beyond that stage in the manufacture or production of the class or kind of merchandise that immediately precedes the final manufacturing or production stage before export to the United States, unless reasonably available information indicates that such dumping has occurred or is occurring, before such immediately preceding stage and is having or has had a substantial effect on the price of the merchandise.

(b) Incorporation of dumped article in another product

(1) DEFINITION -- Incorporation of a dumped article occurs when, in the course of an investigation under subtitle B, the administering authority determines that

(A) the product under investigation has been incorporated in another product manufactured in the same country and exported to the United States, and

(B) the manufacturer or producer of the product under investigation knew that the other product would be exported to the United States, and

(C) the product under investigation, in the process of being incorporated in the other product, has not been further modified.

(2) IMPOSITION OF DUTY ON OTHER PRODUCT -- If, in the course of an investigation under Subtitle B the administering authority determines that the product under investigation is being incorporated in another product for export to the United States, the administering authority will impose on the other product an antidumping duty calculated to offset any price advantage the other product may have gained through the incorporation of the dumped product.

(3) CALCULATION OF FOREIGN MARKET VALUE -- If, in the course of an investigation under Subtitle B the administering authority determines that the product under investigation is being incorporated in another product for export to the United States, the administering authority, when calculating foreign market value, shall disregard any sales made by the foreign manufacturer to the manufacturer of the other product.

IV. REFORM OF SECTION 301

Roses Inc., the Floral Trade Council and Bomont Industries, Inc. believe that, while § 301 offers the means for redressing unfair trade practices which burden U.S. commerce, both foreign and domestic, it has often not been effectively used by this and preceding Presidents. Following are their views on certain of the proposed reforms of § 301 under consideration by this Committee, and additional proposals.

A. Comments on Pending Proposals, and Proposal for Judicial Reviewability of Arbitrary Decisions Not To Initiate Investigation When Petitioner Has Presented All Information Reasonably Available.

Many of the bills pending before this Committee would transfer final decision-making authority under § 301 from the President to the U.S. Trade Representative. See H.R.3847, § 203; H.R.3777, § 104; S.1356,

§ 201. Roses Inc., the Floral Trade Council and Bomont Industries, Inc. do not believe that such a transfer is necessary, and agree with the views expressed by the USTR in opposition to such an amendment. Ambassador Clayton Yeutter, Testimony to the Subcommittee on Trade, House Committee on Ways and Means, April 8, 1986, at 4.

Some reform, however, can strengthen the remedy. We believe that allowing judicial review of USTR's determinations would improve the caliber of his determination of whether to investigate the subjects presented in petitions from interested business interests, and more importantly, improve the quality of his findings concerning foreign government measures which unfairly, unjustifiably or in violation of our trade agreement rights, burden or restrict U.S. foreign or domestic commerce. Thus, judicial review should be allowed of decisions not to initiate an investigation after receiving a petition, and determinations that unfair, unjustifiable or agreement-violative practices are not present. Like the decisions of other governmental bodies, the decisions of the USTR not to investigate can be arbitrary or capricious.

The statute should be amended to require the USTR to initiate an investigation whenever a petition identifies an unfair foreign practice which burdens or restricts U.S. commerce and is supported by information reasonably available to the petitioner. The amendment should rule out as a reason for not investigating any assertion by USTR that the facts defining the practice and its effect are not sufficiently developed. An investigation of the practices of a number of countries with respect to fresh cut roses, for instance, was not initiated on the basis of the USTR's conclusion that insufficient information has been presented in the

petition filed by Roses Inc. That petition, nonetheless, was highly documented, and as specific in its allegations as possible in light of foreign laws, foreign determinations, published articles and other sources publicly available. To achieve a fuller degree of factual development, after all, is the purpose of the investigation.

A fuller understanding and the measurement of commerce-burdening practices of other nations usually requires the resources of the United States Government. It contradicts the purpose of § 301 for USTR to decline to initiate an investigation because it believes the facts describing the commerce-burdening practices and their effect have not been fully developed in the petition. The statute already provides explicit guidance as to what kinds of practices are to be considered within the ambit of Sec. 301. When adequately clear guidelines, reformed as recommended above, are provided in the statute, judicial review to determine if the findings and determinations of USTR are supported by substantial evidence, and are otherwise consistent with the law are well within the expertise of the U.S. Court of International Trade. As in the case of its jurisdiction over determinations of the Department of Commerce and the U.S. International Trade Commission in antidumping duty and countervailing duty investigations, an extension of the Court's jurisdiction to include review of USTR's determinations under Sec. 301 would produce a salutary improvement in the agency's interpretation and administration of the law. This approach, rather than removing the President from the process, is the proper course for reform.

We partially disagree with Ambassador Yeutter's opposition to

proposals that retaliation be made mandatory in certain circumstances. Id. at 5. We propose that, consistent with the President's essential role in matters of foreign affairs, the President be required to act unless he certifies to the Congress that the consequence of acting would be to cause a defined foreign policy crisis of measured proportions which outweighs the harm to the national economy in not acting to offset the unfair, unjustified or agreement-violative trade practice in question. Included in the specification of the President's options for action, should be the alternatives of negotiation and compensation, promptly initiated, fortrightly pursued, and expeditiously concluded. If the United States can negotiate an effective agreement with the offending country that is appropriately scaled to the dimensions of the wrong to be righted, with reasonable promise of fulfillment, there would be no need for more forceful measures of redress.

We believe that requiring the President to take effective action in some carefully circumscribed circumstances under § 301, if combined with a broad range of alternative actions available to him, subject to the exception based upon his certification to the Congress, described above, should, along with the judicial review of the STR's determinations as a prelude to such action described above, insure that § 301 will effectively redress the harm to U. S. foreign and domestic commerce now being imposed with impunity by our trading partners.

Several bills have singled out export targeting practices as a type of unfair trade practice, the existence of which should require retaliation. S.1493, §§ 301-303; S.1356, § 401-403. We agree with these

proposals, but point out that § 301 now includes industrial targeting within its ambit. See Ambassador Clayton Yeutter Statement at 5-6. Should these bills ultimately not be enacted, the U.S. Trade Representative will still be able to investigate and determine that specific foreign government practices which amount to export targeting are unfair trade practices, remediable under the statute.

So many Sec. 301 investigations have dragged on interminably, there is a ground swell for amendments to impose stringent time limits for completion of Sec. 301 action. See H.R.3777, § 402. We support the concept that the U.S. Trade Representative should act expeditiously in conducting investigations, recommending measures of redress, and executing the President's mandate under § 301. In this respect, Roses Inc., the Floral Trade Council and Bomont Industries, Inc. agree in part with Ambassador Yeutter that "[a]n amendment to Section 301 to put a 24-month deadline on dispute settlement could be helpful." Statement of Ambassador Clayton Yeutter, supra, at 6. We believe 24 months is unnecessarily long, and propose 270 days instead. Further time limitations are also necessary. Borrowing from the antidumping and countervailing duty statute, if the time limits which would be imposed are impracticable because of the complexity of a particular case, the USTR should be authorized on his own motion to extend the investigation of a "more complex" case for a period of not to exceed 90 days.

B. Proposed Reform

Although many of the above comments of Roses Inc., the Floral Trade Council, and Bomont Industries, Inc. with respect to section 301

are taken account of in proposals already pending before the Committee, we set forth following specific amendments to provide for judicial review of a determination not to initiate a 301 investigation.

Insert at 19 U.S.C. 2412 (a) a subparagraph (3):

> (3) Petition Requirements.--An investigation under section 2411 of this title shall be commenced whenever the petition filed with the United States Trade Representative by an interested party alleges the existence of foreign government or foreign producer practice within the ambit of section 2411(a) of this title and is supported by information reasonably available to the petitioner.

Change the number of 19 U.S.C. 2412 (b)(2) to 19 U.S.C. 2412 (b)(3) and insert as new 19 U.S.C. 2412 (b)(2):

> (2) Review of Determination not to initiate.--Within 30 days after the date of publication in the Federal Register of notice not to initiate an investigation with respect to the petition, the petitioner may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner and style prescribed by the rules of that court, contesting that determination. The court shall hold unlawful any determination not to initiate an investigation found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

EXECUTIVE SUMMARY

I. ITA'S ESP OFFSET AND FAILURE TO DEDUCT U.S. RELATED-PARTY PROFITS FROM ESP

To determine margins of dumping when the U.S. importer is related to the foreign producer/exporter the ITA determines the United States price using the ESP methodology, rather than the actual purchase price used when the U.S. importer is not related to the foreign producer/exporter. ESP is a proxy for what would have been the price at importation had the parties not been related and, thus, dealt at arm's-length. The Congress intended that ESP be derived by taking the resale price paid by the first unrelated U.S. purchaser, and subtracting from the resale price the importer/reseller's selling and general expenses, including commissions (and their equivalent, profits) included by the importer in his resale price.

A. ESP OFFSET

In applying this methodology, however, the ITA, in clear contravention of Congressional intent, has followed an "ESP offset" practice, under which deductions are made not only from the U.S. resale price but also from the foreign home-market first-sale price. This practice has no basis in the statute and indeed negates the purpose of the ESP methodology (to arrive at a proxy for an arm's length importation in the United States). It improperly makes adjustments to the foreign market price (arm's-length, first-sale price) as if it too were a resale price and as if a proxy were needed to arrive at an arm's-length price. The reduction of the foreign market value under the ESP offset causes margins of dumping to be understated. We therefore propose that the ESP provision be amended to unequivocally prohibit the ITA from making this "offsetting" deduction from foreign market value.

B. FAILURE TO DEDUCT U.S. RELATED-PARTY PROFITS FROM ESP

In calculating the ESP proxy for what an unrelated importer would have paid, the ITA, under current practice, refuses to deduct profits from the resale price at which the merchandise is sold to the first unrelated purchaser. As a result, the ESP derived by the ITA is not a true proxy as it contains the profit element of the resale price. The ITA's refusal to deduct profits results in a U.S. price that is unrealistically high, thereby further reducing the chances for domestic petitioners to obtain relief where the importer is related to the foreign manufacturer. This practice is contrary to the Antidumping Code, upon which U.S. dumping law is based, and contrasts sharply with the practice in other countries. To address the injustice caused by this practice, we propose an amendment expressly requiring the ITA to deduct reasonable profits in its ESP calculation to arrive at an accurate proxy for an arm's length importation.

II. TRANSSHIPMENTS

Under current practice the foreign exporter is able to avoid the impact of U.S. antidumping or countervailing duty law by the simple expedient of first shipping his product to another country, where it

undergoes minor final processing, before transshipping it to the U.S. We propose an amendment to the effect that where a product undergoes only minor processing, and the manufacturer knew that his product would ultimately be exported, the product should be regarded as having been exported from the first country, and not from the intermediate country.

III. DOWNSTREAM DUMPING

Current law provides that an exporter whose product benefits from subsidized inputs does not escape the reach of U.S. countervailing duty law. Under the "upstream subsidy" provisions, subsidies bestowed on inputs will result in the imposition of duties on the end product, provided certain conditions are met.

As the law stands now, however, exporters whose products benefit from dumped inputs are able to pass on the unfairly gained advantage to their U.S. sales. Thus, we propose that the law be amended to include "downstream dumping" provisions.

In addition, present law permits an exporter to escape the impact of U.S. trade law by incorporating his product in another product manufactured in the same country. Because duties will not attach to this other product, the exporter is nevertheless able to penetrate the U.S. market. In addition, the dumping duty he incurs on the product covered by the investigation will be drastically reduced because the sale he made to the manufacturer who incorporated his product is made at dumping level prices, and will greatly reduce the foreign market value against which the ITA compares the U.S. price. To address this situation, we propose legislation requiring the ITA to ignore the sale to the second manufacturer for purposes of determining foreign market value, and to impose a duty to offset the advantage gained by the second product.

IV. REFORM OF SECTION 301

Under current practice, USTR's decisions not to initiate an investigation under section 301 may be based on the petitioner's not having presented conclusive proof of the offending act, policy or practice. Roses Inc., the Floral Trade Council, and Bomont Industries, Inc. propose amendments which would require the USTR to initiate an investigation when the allegations of a petitioner are supported by information which is reasonably available to it, and which would allow judicial review of a determination not to initiate.

Although we do not support removal of the President from the 301 process, we believe the President should be required to act unless he certifies to Congress that his decision is based on a foreign policy crisis of measured proportions which outweighs the harm to the national industry from the unfair practice.

We support legislation to include targeting among the practices covered by section 301 but feel interpretation of present law could accomplish the same result. We also support amendments which which would add stringent time limits for completion of 301 actions.

Mr. PEASE. OK, Mr. Stewart. Thank you very much. That was good testimony, and we appreciate the care that you have taken to give us some detailed recommendations.

Are there questions? Mr. Crane.

Mr. CRANE. I have been reading this and trying to study this methodology with the ESP offset that you make reference to, and I am not sure yet that I understand it. If Tokyo Rose has an American outlet and it sells, I presume, to the American outlet—I mean there is a price from the exporter to the retailer here in the States, and that is an affiliate of the mother Tokyo Rose, all of the costs, the first sale costs, and the shipping costs, the profit—everything is included in the determination of the honest cost of production?

Mr. STEWART. You have come close to it, Mr. Crane. Let me respond to your question succinctly, using the actual flow of roses from Colombia through the port of Miami into the United States.

The Colombian growers own the major import houses and brokerage firms in Miami. When the Colombian grower transfers the rose by air, ships it to Miami to his own affiliated importer, the price he puts on the transfer invoice is unworthy of being used in calculating whether there is dumping. The law intends that when that Miami importer then resells the imported rose, let's say to a wholesaler in New York, and he resells at 20 cents a bloom, he is to subtract—the Commerce Department is to subtract from that resale price the 20 cents, the air freight from Colombia to Miami, which is about $.04 a bloom, the U.S. import duty to bring it into the country, let us say which is $.01, so he subtracts from the $.20 resale price the 5 cents of expenses, bring the price down to $.15.

In addition, that importer in reselling to the New York wholesaler has certain selling expenses. Let's say that they amount to 4 cents a bloom. They are to be subtracted, bringing it down to 11 cents.

The importer, in reselling, has a profit. His profit margin may be 3 cents a bloom. The Commerce Department declines to subtract that.

Moreover, when the Commerce Department compares that 11 cents adjusted exporter sales price with the fair value of the merchandise, they subtract from the fair value of the merchandise the same amount of selling expenses that they subtracted in determining this proxy arm's length price. And that defeats the purpose of the exporter sales price. That is the main problem. And we quote in our fully prepared testimony a description by Judge Watson of the Court of International Trade of the absurdity of the Commerce Department doing this, because they are ignoring the purpose of this calculation to arrive at a proxy arm's length price.

I hope that makes it more clear.

Mr. CRANE. It does. That helps enormously.

What kind of rationale has Commerce advanced for that kind of a calculation?

Mr. STEWART. Rationale is a heavier term than I would use, because it implies a process of cerebration. The reason that they give is that since they subtract something from one side of the equation, they should subtract the same thing from the other side of the equation. They put it that simply.

Mr. CRANE. That's a little odd.

Mr. STEWART. The combined effect of these two ESP practices, the ESP offset and the failure to subtract the profit from the resale price, is to reduce the dumping margin by from 20 to 25 percent, and that virtually eliminates dumping margins when foreign producers set up U.S. sales affiliates. And in our prepared testimony, we cite a Law Review article written by a lawyer who customarily represents foreign interests, in which he advises that if they set up a U.S. sales affiliate, they will have smaller dumping margins than if they sell direct into the U.S. market because of this aberrant policy of the Commerce Department.

Mr. CRANE. Thank you for clarifying the point, and thank you for your testimony.

Mr. PEASE. Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman, and thank you, Mr. Stewart, for your testimony.

I have some of the same trouble that Mr. Crane has with your attack on the ESP offset, but I think my confusion is sufficiently deeply set so that we are probably not going to take care of it today, and perhaps we can do it at a later time.

Mr. STEWART. Might I have the privilege, Mr. Frenzel, of meeting with you in your office to discuss it?

Mr. FRENZEL. Well, you might better meet with some members of the committee staff who share my confusion.

Mr. STEWART. It would be a privilege to do so.

Mr. FRENZEL. Great.

The next question is on transshipments. Are transshipments a common import practice now?

Mr. STEWART. It depends upon the commodity. In the case of nylon impression fabric from Japan, an ongoing case where I represent the petitioner, the volume of nylon fabric exported to Germany is larger than the volume exported by Japan to the United States, and there has been an increasing flow of imports from West Germany of nylon impression fabric, either slit or inked. So in that particular commodity, it represents a major problem.

Transshipment has also proven to be a problem, under existing antidumping orders, such as synthetic methionine from Japan——

Mr. FRENZEL. Well, are these items regularly used in the floral trade?

Mr. STEWART. I represent three different clients. Bomont Industries, my third client here, is a producer of nylon impression fabric.

Mr. FRENZEL. OK. Then transshipments are not a problem with the floral trade.

Mr. STEWART. It is a problem in the floral trade, in this respect. We have presented evidence to the Customs Service and the Department of Agriculture that roses from Israel are shipped to the Netherlands, and repackaged and shipped from the Netherlands into the United States marked "Product of the Netherlands." Roses from Israel are subject to a countervailing duty order, but by shipping the roses into the Netherlands, they come in from the Netherlands as product of the Netherlands and avoid the countervailing duty.

Mr. FRENZEL. And are they mixed with Netherlands roses or not?

Mr. STEWART. By the observation of some of our members, they are simply reshipped in the same types of boxes marked "Product

of the Netherlands," but they are not commingled with roses from the Netherlands.

Mr. FRENZEL. And you have informed the Customs Service of this?

Mr. STEWART. Yes, we have in writing informed both the Customs Service and the Department of Agriculture, APHIS.

Mr. FRENZEL. Does the upstream subsidies to which you referred also apply to the floral trade?

Mr. STEWART. Yes, they do.

Mr. FRENZEL. Can you describe the subsidies? Take an example.

Mr. STEWART. Yes. In the case of the Netherlands, they are given a subsidy for the cost of the natural gas, which is an important input. They are given subsidies for the construction and modernization of their greenhouses. They are given subsidies for the research and development of new types of rose plants. They are also given subsidies in certain of their export costs. All of those subsidies enable them to lower their costs, their price of the rose exported to the United States, and they all or most of them precede the actual growing of the rose in the Netherlands.

In the case of Colombia, there is a subsidy in the form of below-fair-value selling of the rose plants, which are sold to the Colombians at approximately half the cost that rose growers in the United States must pay for the cuttings of the plants that are put into the ground and produce the roses.

Mr. FRENZEL. Who is the seller in that case?

Mr. STEWART. The sellers are rose hybridizers in the case of the Colombians, principally in Europe, and they export these cuttings to Colombia at what we consider to be a dumping price, and that becomes a downstream dumping further advantaging the Colombians' export of roses to the United States.

Mr. FRENZEL. Why wouldn't they offer those cuttings to us? Why is the price preferential?

Mr. STEWART. We have in the United States a very vital hybridizer industry that develops and produces rose plants. We also import plants from France, but our growers, in importing plants and cuttings from France from the principal foreign hybridizer do not receive the advantage in price that we understand is made available to the Colombians.

Mr. FRENZEL. For some mysterious reason, they like to sell to Colombians cheaper?

Mr. STEWART. Well, the Colombians do not have an endemic hybridizer industry such as in the United States, and by favoring the Colombians, who are rapidly taking over the United States market, they have gone from zero to now more than 25 percent of the United States market, the people supplying rose plants to the Colombians are, in effect, supplying the plants that grow the roses that supply the United States market in increasing percentages. My own view is that that is the reason that is occurring.

Mr. FRENZEL. OK. It is just a combination of marketing and pricing strategy for the long term for them.

Mr. STEWART. Well, because of our laws, when new plants come into the United States, they have to go into quarantine by the Department of Agriculture for a period of time.

Mr. FRENZEL. I see, and they don't have to do that——

Mr. STEWART. They do not have to do that in Colombia.

Mr. FRENZEL. Can you tell me how long that period is, a guess or an average, say for a rose?

Mr. STEWART. They have to be in quarantine for two growing seasons.

Mr. FRENZEL. Oh, really?

Mr. STEWART. Yes; it is a very significant handicap. However, the fact that new plants have to go through that quarantine in the United States does not justify the rose plants being sold at less than fair value to the Colombians and increasing their cost and price advantage in exporting roses to the United States.

Mr. FRENZEL. I wouldn't think so either, but it is an interesting item which I was not aware of.

Going back to the export subsidies of the government of the Netherlands, are you thinking of taxes in this regard or are there direct payments?

Mr. STEWART. I'm not thinking of taxes, although they do also get the remission of excise taxes on their floral culture production, but it is a lower price on natural gas than is made available to anyone else using it in the same quantity as a specific subsidy mandated by the partially government-owned natural gas company in the Netherlands. It is cash payments in the form of the subsidies to assist them in modernizing their greenhouses, and it is cash payments in the form of defraying a portion of the cost of research and development of new plants.

Mr. FRENZEL. Those are the three principal upstream subsidies that enable them to dump downhill?

Mr. STEWART. Yes; and we laid this out in our 301 petition, which the USTR refused to investigate.

Mr. FRENZEL. Thank you very much, Mr. Stewart. I appreciate your testimony.

I yield to my colleague.

Mr. PEASE. Again, Mr. Stewart, on behalf of the subcommittee I would like to thank you for testifying, and we will benefit greatly from your expert testimony.

Mr. STEWART. Thank you, Mr. Chairman. Thank you, members of the committee.

Mr. PEASE. Our final witness today will be Ms. Lucy Sloan, member of the board of directors for the North Atlantic Fisheries Task Force.

Ms. Sloan, you may proceed.

STATEMENT OF LUCY SLOAN, BOARD MEMBER, NORTH ATLANTIC FISHERIES TASK FORCE, ACCOMPANIED BY ROBERT PORTMAN, COUNSEL

Ms. SLOAN. Thank you, Mr. Chairman.

With me today is Robert Portman of the law firm of Patton, Boggs & Blow.

We are here today because we would like to seek an amendment to clarify the existing definition of a foreign government subsidy. We seek to ensure the countervailability of those programs where a foreign government provides to an industry, either through unemployment insurance or otherwise, benefits which are substantially

disproportionate to the amounts of premiums paid by the benefit recipients.

As I described in my statement, we are here because the International Trade Administration, to our astonishment and for whatever reason, chose in looking at our countervailing duty petition to find that Canadian unemployment insurance paid the self-employed Canadian fishermen was not a subsidy.

We were astonished by that because of the $140 million paid out to fishermen, roughly 90 percent of it government money, and the fishermen receive benefits in the ratio, on an average, of 12 to 1 over the premiums they pay for this program.

We think that under the current law, this is clearly a bounty or a grant. It is a transfer payment, supplemental income, but given the ITA decision, it is also clear that we need to clarify to avoid these kinds of problems in the future.

We would like very much to work with the subcommittee and the staff to ensure that an amendment of this sort will mean that these kinds of programs will not continue to be misinterpreted to the disadvantage of the U.S. fishing industry.

There is a significant amount of interest in the New England delegation on this whole problem, and we anticipate that Congressman McKernan and others will introduce this legislation next week.

We would be glad to take questions if there are any that we can answer now, or provide material for the record.

[The prepared statement follows:]

STATEMENT OF LUCY SLOAN, MEMBER, BOARD OF DIRECTORS, NORTH ATLANTIC FISHERIES TASK FORCE

Good afternoon, Mr. Chairman, Members. I'm Lucy Sloan, a member of the Board of Directors of the North Atlantic Fisheries Task Force. The Task Force is an industry group established to study the U.S. North Atlantic fishing industry's trading relationships with other countries and actively to seek solutions to trade and related problems. The major issue with which we are currently dealing is that of subsidized imports of fresh Atlantic groundfish from Canada.

We appreciate the opportunity to testify before this Subcommittee today to discuss with you an amendment we seek to Title VII of the Tariff Act of 1930. Through this proposed amendment we seek to clarify the existing definition of foreign government subsidy. In particular, we seek to ensure the countervailability of those programs where a foreign government provides to an industry, either through unemployment insurance or otherwise, benefits which are substantially disproportionate to the amounts of premiums paid by the benefit recipients.

We are seeking this amendment because we are confounded by a recent Commerce Department decision in a countervailing duty case brought by the Task Force on imports of fresh groundfish from Canada. Despite the fact that it is a targeted program which provides grossly disproportionate benefits to Canadian fishermen, the Commerce Department did not find countervailable the so-called unemployment insurance program for self-employed fishermen.

This Canadian program is incorrectly termed "unemployment insurance". First, there is no insurance risk involved: it is paid predictably and annually to self-employed fishermen during their off-season. Second, there is no employer to pay premiums because it is restricted to self-employed fishermen. Finally, and most importantly, it is a massive government transfer payment directly to fishermen far in excess of the small amount of insurance premiums paid by fishermen. Of the approximately $140 million paid annually to fishermen under this program, over 90 percent comes straight from the federal government's coffers. Whereas the average ratio of premiums paid to benefits received under the general Canadian unemployment insurance scheme is about 1-to-1, the average ratio in the self-employed fishermen's program is about 1-to-12.

We think that these unemployment insurance transfer payments qualify as a bounty or a grant under the definition of subsidy under current countervailing duty law. However, to our astonishment, at least in this instance and for whatever reasons, the Commerce Department chose not to recognize these absurdly disproportionate benefits—grants, in fact—as countervailable. These funds are essential government support of an inefficient industry, much of which could not otherwise survive to undersell unfairly U.S. fishermen in U.S. markets.

We look forward to working with you and your staff and with other concerned Members to clarify this section of the Tariff Act of 1930 to ensure that this practice of the Canadian government as regards their fishing industry does not continue to be interpreted to the disadvantage of the United States fishing industry. The explicit inclusion of such government programs under the statutory definition of a subsidy already has the support of a large part of the New England delegation and Rep. John McKernan of Maine plans to introduce legislation on this matter next week.

Mr. PEASE. Well, thank you very much, Ms. Sloan. We appreciate your testimony. It certainly appears on the face of it that there is a subsidy. Do you know of any other industry in Canada other than the fisheries industry where the ratio of benefits paid to premiums paid exceeds roughly 1 to 1?

Mr. SLOAN. I defer to Mr. Portman on that one.

Mr. PORTMAN. Mr. Chairman, there are other cases where, for instance, construction workers who have seasonal work receive in excess of a 1-to-1 ratio. The 1-to-1 would be the average, much like the U.S. unemployment insurance scheme that is set up so that the premiums paid would roughly equal the benefits paid out. So the average is 1 to 1.

I don't know what the exact numbers are in the construction trade, but I would imagine they would be something like 4 to 1, for instance. But we were not able to uncover any other industry where there was that kind of a disparity, the 12 to 1. Counsel for the Canadians did bring up the fact that the trappers, apparently, in Canada have an even higher ratio. We weren't able to substantiate that, but apparently there are very few trappers in Canada who receive unemployment insurance, but it is a very special program in that it is only for self-employed fishermen.

In other words, most employees are covered by their employers, and this is the general program where there is an average of 1 to 1. For the fishermen there is a special program for self-employed fishermen. No other self-employed group is similarly treated.

Mr. PEASE. Is unemployment——

Mr. FRENZEL. Mr. Chairman, can the witness identify himself for the record?

Ms. SLOAN. I am sorry. I thought I had introduced him. This is Robert Portman, of Patton, Boggs & Blow. My apologies.

Mr. PEASE. Do you happen to know whether unemployment compensation in Canada is paid out of a trust fund, a separate trust fund as opposed to general revenue?

Mr. PORTMAN. That is an excellent question we actually don't have in our written statement and probably should. One of the facts that led us to believe that this was a countervailable subsidy from our first look at it was the fact that under the general program, the funds go in and out of a special unemployment insurance account. In other words, in any given year, when there is an excess of benefits paid out over premiums, that special account, the unemployment insurance account, which is a Federal Government account separate from its general treasury, has to be supplemented

in some way, and the way that happens is that a loan is taken from the general treasury.

In the case of the self-employed fishermen's program, it is the only unemployment insurance program that is funded directly out of the general fund. So that is a distinguishing feature that we think is critical, and we think it is obviously much easier to hide the fact that there is a 12 to 1 type ratio, that is, that roughly 90 percent, in fact more than 90 percent of the benefits are actually government payments that are not compensated for through premiums being paid in. So that is a difference.

Mr. PEASE. And you say that Mr. McKernan will be introducing a bill soon which will incorporate your suggested remedies of the situation?

Ms. SLOAN. Yes, next week, we think.

Mr. PEASE. Fine.

Mr. Frenzel.

Mr. FRENZEL. Thank you. In my State, due to seasonal employment, construction workers do of course have ceilings on unemployment compensation premiums. Construction workers normally draw out about four times as much as their employers put into the fund. Resorters pay probably one-tenth as much as their employees draw from the fund. Any seasonal employees tend to be well over 1-to-1. The fund is supported by borrowings from the Federal Government and terrible oppressive taxation on law offices and people who don't have a lot of unemployment compensation.

Are you persuaded that the 1 to 12 ratio is far worse than we can find in the United States, particularly in seasonal areas?

Mr. PORTMAN. I don't know the answer to that question. We did take it upon ourselves to look at other countries and look at their unemployment insurance programs, to look for both self employed programs and also programs where there is a disproportionate ratio. We weren't able to uncover any other programs like the Canadian one.

To answer your question, I think probably there are some seasonable employment in the United States where there is, as you mentioned, a 4 to 1 or so ratio. I don't know if there is anything to that great extent, of the 12 to 1, especially when it represents such a large part of the total unemployment insurance payment. $140 million a year is a rough estimate of last year's total payment to self employed fishermen.

Mr. FRENZEL. As I understand the laws of most of our States, if I am self-employed and choose to pay unemployment compensation premiums, I can be covered in most of the States of the United States. Is that your impression?

Mr. PORTMAN. I think that is true in Massachusetts. I don't think it is true in Maine. We really just focused on the fishing States. Most self employed people, of course, choose apparently not to do that. They would prefer not to pay the amounts they have to pay in order to receive the benefits. At least that is our experience along the east coast. I'm not sure of the answer to that question, what other States may have provisions like that.

Ms. SLOAN. One of the things that puts us at a competitive disadvantage with the Canadians is that the fishermen whom we represent fish year round. It is not seasonal. They have to fish if they

are going to make money. They are self employed. There is nobody picking up unemployment compensation for virtually any of them. There are some with union contracts and it is dealt with that way. There are ways in the States of dealing with it. For the most part, one of the disadvantages we suffer is that our people work year round and are self-employed. There are no programs like this.

This supplemental income enables more fishermen in Canada to fish and to produce products which are under selling our products in the United States.

Mr. FRENZEL. Are you an association executive or fisheries employer or lawyer? What is your position?

Ms. SLOAN. I work for the National Federation of Fishermen as an independent consultant to them. I have for 13 years. I have represented commercial fishermen nationwide for 13 years. This New England situation, with which I am also involved through the National Federation of Fishermen, is only one example of problems which also exist on the west coast and to a certain extent in Alaska.

Mr. FRENZEL. You have the same problem on the west coast?

Ms. SLOAN. We have similar kinds of problems.

Mr. FRENZEL. It is more acute on the east coast?

Ms. SLOAN. At the moment, it is more acute on the east coast, although I was just talking to some of my west coast members, who tell me that now fish from the Canadian Maritime is being air freighted into the west coast. That air freight is subsidized.

Mr. FRENZEL. I need to go back to the statement you made earlier in which you indicated that it is a whole separate program for fishermen. It is not part of a national program. That's what you have discovered?

Ms. SLOAN. Yes.

Mr. PORTMAN. I could clarify that, Mr. Frenzel. The self-employment aspect of the program is special. In other words, there is no other self-employed group in Canada that receives Federal unemployment insurance. The self-employed fishermen constitute a specific group that has been targeted and that receives this benefit.

Under the countervailing duty laws, as you know, you have to show that the subsidy is targeted to a specific industry, group of industries. We believe that this test is easily met in our case because there is not a self-employed component to the general unemployment insurance.

Mr. FRENZEL. Except that you do not deny that in some States, self-employed Americans could be collecting?

Mr. PORTMAN. That is true. As you know, under the countervailing duty laws, that is not a legally relevant point in terms of the law. I think that is probably true of some self employed people.

Mr. FRENZEL. I think you would be safer to prove that this is a program that applies only to fishing people, if you can do it. Any kind of seasonal employees typically are getting these strange multiples, under most country and State jurisdiction programs.

Mr. PORTMAN. The seasonal aspect of it makes it unlike most insurance because there is no risk involved. In other words, every year you know you are going to be unemployed for half a year.

Mr. FRENZEL. That is what I have been telling Mr. Pease about our unemployment compensation laws. We have river boat cap-

tains in my State who customarily work a few months a year and make very high salaries and collect unemployment compensation the rest of the year. I don't think that is what unemployment compensation is all about, to take care of those people. I can't tell Canada how to design their program. I can say if you have one that is clearly identifiable as a specific industry subsidy, then I think we would want to countervail it.

Mr. PORTMAN. I think this issue has been raised at a relatively high level with respect to the United States telling Canada what Canada should or should not do. That is not our point. If they want to have the program, that is fine. We think it is an unfair subsidy.

Mr. FRENZEL. I must say I am inclined to agree with you. We will be looking for more information from you when Congressman McKernan introduces his bill.

I might suggest that this committee is working on an omnibus trade bill which includes such items as you are interested in. That freight train seems to be leaving town with great expedition. The sooner Congressman McKernan introduces his bill, the more chance there will be that it can be freighted along with the rest of it.

Ms. SLOAN. Thank you. I think we will urge him to do so as quickly as possible.

Mr. FRENZEL. I yield my time.

Mr. PEASE. Thank you very much, Ms. Sloan and Mr. Portman, for your testimony. We will be in touch with you again. We appreciate your appearing today.

This concludes today's hearing. The subcommittee will meet again tomorrow morning at 9:30 a.m. in this room.

[Whereupon, at 2:40 p.m., the hearing was recessed, to reconvene at 9:30 a.m., Friday, April 11, 1986.]

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